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Supreme Court of the United States

OCTOBER TERM, 1965

No. 1118 85

PLACID OIL COMPANY and LA-TERRE CO., INC.,
Petitioners,

—v.—

UNION PRODUCING COMPANY and TEXAS GULF PRODUCING COMPANY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND/OR TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND/OR TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Louisiana, entered in the above-entitled case on November 12, 1965, and/or the judgment of the Court of Appeal, First Circuit, State of Louisiana, entered on July 1, 1965.

CITATIONS TO OPINIONS BELOW

The opinion of the 17th Judicial District Court for the Parish of Terrebonne, State of Louisiana, is unreported and is printed in Appendix B hereto, *infra*, p. 1b. The opinion of the Court of Appeal, First Circuit, State of Louisiana, printed in Appendix B hereto, *infra*, p. 18b, is reported at 178 So.2d 392. The opinion of the Supreme Court of the State of Louisiana, printed in Appendix B hereto, *infra*, p. 59b, is reported at 179 So.2d 432.

JURISDICTION

The judgment of the Supreme Court of the State of Louisiana was entered on November 12, 1965. On February 3, 1966, Mr. Justice Douglas entered an order extending the time for filing this Petition for Certiorari to March 14, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3), since petitioners' claims to title, rights and privileges in valuable oil and gas properties were nullified by the state courts' actions in voiding certain Federal Township boundaries fixed for a century under the statutes of the United States and the authority and commission of the Secretary of the Interior and his predecessors, and in "fixing" a new boundary for these Federal Townships.

QUESTION PRESENTED

Whether a state court, in a proceeding between private parties, has the authority to set aside the official boundaries of two Federal Townships—surveyed, platted and fixed by Federal executive authority for over a century—and "fix" a new boundary for the two Townships.

STATUTES INVOLVED

The statutes involved are printed in Appendix A, *infra*.

STATEMENT OF FACTS

This is a dispute between private parties. The facts are intricate—and we have incorporated overlay charts in the hope of presenting these facts concisely and in an intelligible fashion. But the issues are simple and straightforward: the integrity of the Federal survey system, and the power of state courts to dissolve century-old Federal

Township lines and to "fix," "decide," and "settle" new "legal" boundaries of such Townships.

The Federal survey system is older than the Constitution. Rectangular surveys and the establishment of Federal 36-square-mile townships began with the Northwest Territories, May 20, 1785,[1] and has been carried forward for almost two centuries under Congress' power to "make all needful Rules and Regulations respecting the Territory . . . belonging to the United States." U.S. Constitution, Article IV, Section 3. During the Nineteenth Century, the Surveyor General's Office extended to rectangular cadastral survey system to the vast areas of the Louisiana Purchase, the Oregon Country, the Mexican Cession, the Gadsden Purchase and the Alaska Purchase.

Federal survey machinery has thus laid out principal north-south meridians and east-west base lines for more than two million square miles of land west of the thirteen colonies, surveyed these areas and produced a vast net of surveys for all the lands once part of the western public domain. All land transfers out of the Federal domain were —and are—made on the basis of these surveys, and by descriptive reference to them. Federal township surveys are of profound importance to private property transactions. They fix the precise location of every unit of land—

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[1] "An Ordinance for ascertaining the mode of disposing of lands in the Western Territory," May 20, 1785, Journals of the Cont. Cong. Vol. XXVIII, 1785, pp. 375-381 (Lib. Cong. 1933).

William Grayson of Virginia, who succeeded Thomas Jefferson as the Chairman of the Committee that presented the Ordinance to the Continental Congress, in a letter to Washington urged the reetangular survey system in preference to "indiscriminate location" of boundaries because "it superseded the necessity of courts for the determination of disputes." H. C. Moore, *Origin and Authorship of Present System of Government Land Surveys*, 2 J. Ass'n. Engn. Socs. 282 (1882-83).

public or private—in the western United States and are the foundation of the entire structure of land conveyancing in the West.

Since 1812,[2] the Secretary of the Interior—or his various predecessors—has been directed to "perform all executive duties appertaining to the surveying" of public lands. R.S. § 453 (1875), now 43 U.S.C. § 2 (1964). These lands were to be "divided by north and south lines . . . so as to form townships of six miles square . . . ", and the townships were to be divided into sections "containing, as nearly as may be, six hundred and forty acres each." R.S. 2395 (1875), now 43 U.S.C. § 751 (1964). The surveys were to be returned to the Secretary "who shall cause therefrom a description of the whole lands surveyed to be made out" and "a fair plat to be made, . . . recorded in books to be kept for that purpose." R.S. § 2395 (1875), now 43 U.S.C. § 751 (1964). The corners and boundaries of these surveys "shall be established as the proper" corners and boundaries of all Federal sections. R.S. § 2396 (1875), now 43 U.S.C. 752 (1964).

The integrity of the Federal survey system is at issue here. This proceeding concerns two adjacent Townships established by Federal surveys in the Nineteenth Century in southeastern Louisiana—Township 20 South Range 17 East, and Township 20 South Range 18 East. (Hereafter, we shall refer to them on occasion as 17 and 18.) These townships are a few miles north of the Gulf of Mexico. They are swamp land, now extremely valuable for their oil and gas deposits. Theoretically—and commonly—such adjacent townships have common boundaries. However, overlaps, errors and inconsistencies were not at all unusual

[2] 2 Stat. 716 (1812).

in Federal surveys made before solar compass technology, particularly in swampy areas and when carried out with primitive instruments by a variety of surveyors.[3] So here. The Federal surveys of Townships 17 and 18 were in error. They overlap each other by some three thousand feet.

The first Federal survey of Township 18—by Foster and Walker in 1831—soon generated complaints by landowners in the area (Exs. B-1–B-8). Meanwhile, the Surveyor General commissioned Deputy Surveyor A. B. Connelly to survey and plat the adjacent township to the west—that is, 17. Connelly completed his survey in 1837. The Surveyor General approved his plat in 1842; it thus became the first and last official survey as to 17. The State of Louisiana thereafter selected and obtained title to 17 based upon Connelly's survey, pursuant to the Swamp Lands Act, R.S. § 2479 (1875), as amended 43 U.S.C. § 982 (1964).

Then, as a result of the landowners' complaints with respect to the Foster and Walker survey of 18, the Surveyor General commissioned Deputy Surveyor C. D. Gorlinski to resurvey 18. Gorlinski completed and submitted his survey in 1855 and the Surveyor General approved the survey and issued a plat of 18, which superseded the old Foster and Walker plat, in 1856. Gorlinski's survey was thus the final survey of 18, and the Surveyor General's approval marked the final boundaries of that township (R. 292-295). The State of Louisiana selected and was granted the relevant portions of 18 pursuant to the Swamp

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[3] For vivid accounts of the difficulties and errors of early surveying, particularly in Louisiana, see Coles, APPLICABILITY OF PUBLIC LAND SYSTEM TO LOUISIANA, in the *Public Lands* (Carstensen ed. 1962), pp. 207, 211-216; and Treat, *National Land System* (1910), pp. 30, 195. In fact the very first line under the Act of 1785—the "geographer's line"—was a mile off course. Stewart, *Public Land Surveys* (1935), pp. 35, 46-57.

Lands Act based, not on Foster and Walker's survey, but on the Gorlinski survey of that Township (R. 294).

Thus, both patents from the United States to the State of Louisiana were based upon the official plats derived from the Connelly and Gorlinski surveys of 17 and 18. (R. 257-258, 293-294). The later transfers of parcels in 17 and 18 by Louisiana to private hands were also based on these two surveys as the official Federal surveys establishing the boundaries of the two townships (R. 121, 294).

Although neither of the two final survey plats as approved by the Surveyor General—by Connelly of 17 and by Gorlinski of 18—revealed the fact, it has long been recognized that the two Townships partly overlapped. To illustrate the overlap, we have attached four charts. Chart 1 hereto shows a schematic rendering of the natural features of the terrain. Chart 2 reproduces the relevant official township boundaries of 17, as established by the survey of Connelly and approved by the Surveyor General in 1837. Chart 3 reflects the relevant official boundaries of 18, as approved by the Surveyor General in 1856 based on Gorlinski's survey. (Chart 4 shows the new line fixed by the Louisiana courts, to which we refer later.) When overlaid, one on another, these charts depict the area of overlap in the Federal Township boundaries—an overlap reflected as well on all official U. S. Government plats, U. S. Geological Survey Quadrangle maps, and the privately printed "Tobin" maps used by the oil and gas industry (R. 149).

It was not long after their completion before the errors in the surveys of 17 and 18 began to generate litigation. In 1880, certain landholders in 17 instituted an "action of boundary" to upset the official Connelly survey and to have the courts redraw the boundaries of 17 to conform with the adjacent Gorlinski boundary of 18. A Louisiana State

Court actually attempted to do so, appointing a court surveyor for the purpose. This Court disagreed and rejected the Louisiana Court's amendment of Connelly's survey. It held that the Connelly survey was the "official survey" of 17 and, under the Federal statutory scheme, whether "the official survey made by Connelly is erroneous, or should give way to the extent of its discrepancies . . . is a question which was not within the province of the court below, nor is it the province of this Court to consider and determine." *Cragin* v. *Powell,* 128 U.S. 691, 697 (1888).

By 1948, petitioner La-Terre had been the owner of large parcels of land in both 17 and 18 for many years. The area was speculative; no wells had then been drilled. In that year, La-Terre agreed to lease to respondent Union Producing Company a number of parcels in the general area, including two sections of the two townships at issue here. The lands subject to this 1948 lease were defined by their Federal survey township designations; the lease provided that Union would select the specific parcels—to be described by reference to "governmental surveys"—which it wished to retain for drilling. It also provided that La-Terre could make no warranty of actual acreage within the Federally-described townships and sections; neither party would have recourse against the other in the event that the stipulated acreages were greater or less than described. The implication was plain: The parties were making their transaction on the basis of the official township boundaries, "correct" or not.

In 1949, Union selected about 4500 acres for permanent lease, all by reference to the Federally-established township plats as provided in the basic lease. These included "the north 200 acres" of Section 13 of Township 20 South, Range 17 East, and "the north 400 acres" of Section 110

of Township 20 South, Range 18 East. Union paid a stipulated flat rate of $10 per acre.

As with the two townships of which they are a part, the two selected sections also overlapped, but Union knew about the overlap (App. B p. 12b; R. 166, 167) and recognized the effect of its selection (R. 176-178). The maps it made after the selection showed the overlap and established the southern boundary of Union's lease in the proper place to reflect that overlap. Union later transferred a half interest in its lease to respondent Texas Gulf but did nothing to exploit its mineral possibilities for the next ten years.

In 1958, petitioner Placid Oil Company, which had been drilling to the east, became interested in the area (R. 238). Placid conducted a survey to determine what La-Terre could lease to it and, on the basis of the survey, leased all La-Terre's interest in both sections "except the [area] which is presently covered by a mineral lease granted Union Producing Company, dated June 21, 1948. . . ." Within ten days of signing the lease, Placid began drilling operations. Eventually it brought in three valuable wells, including well B-1, at a depth of over 15,000 feet, and at a total cost of over $1,000,000. As the Court of Appeal said, ". . . all were producers." (*infra* p. 34b).

Shortly thereafter Union and Texas Gulf instituted this proceeding, claiming, in effect, that well B-1 had been drilled on their land. They petitioned the Louisiana Court to upset the Federal boundaries of the sections selected under the 1948 lease and draw new boundaries: "the overlap does exist, but we ask this Court to determine that in fact the overlap cannot exist in law . . . ." (R. 289). "The Court," according to Union and Texas Gulf, "will have to fix a line between the two sections." (R. 190).

The District Court refused to do so (*infra*, p. 5b):

> "In effect, every interpretation urged by plaintiffs would require that this Court ignore, or alter, the actual boundaries of the sections in question as established by the official surveys . . . ."

The Court of Appeal reversed, noting that Placid and La-Terre "contend that no one has authority to change the range lines," and that Union and Texas Gulf were seeking "a determination by the Court of the common range line between the two sections." It held that the question presented to it for settlement "is the *legal bounds of the two sections* involved here because of the overlapping surveys." [Emphasis supplied] (*infra*, p. 36b). The basic problem was one of judicial authority—"that it is in the *province of the court . . . to decide* what shall be the eastern boundary of Township 20 South, Range 17 East and the western boundary of Township 20 South, Range 18 East, *which shall be a common boundary* to both ranges of Township 20 involved herein." [Emphasis supplied] (*infra*, p. 40b). "A decision must be reached *which fixes the location of* the east boundary, or range line, of Township 20 South, Range 17 East and of Township 20 South, Range 18 East, this range line to be the common boundary between the two ranges in Township 20." [Emphasis supplied] (*infra*, p. 46b). The Connelly survey of Township 20 South, Range 17 East—the same approved survey which this Court had upheld in *Cragin* v. *Powell*—"was unauthorized and legally without any effect . . . ." (*infra*, p. 50b) and "erroneous and illegal," (*infra*, p. 54b) and the Gorlinski line could "have no effect." (*infra*, p. 54b). Accordingly, the Court upset the Federal boundaries of both townships, "ordered, adjudged and decreed" a new boundary line in accordance with what it conceived to be the old Foster and Walker survey—and held

that Union and Texas Gulf had the right to the oil royalties from Placid's well B-1 (*infra,* pp. 55b-58b).

The Court of Appeal denied petitioners' timely application for rehearing, and the Louisiana Supreme Court denied their application for writ of certiorari or writ of review on November 12, 1965, two judges dissenting.[4]

REASONS FOR GRANTING THE WRIT

I. FEDERAL TOWNSHIP BOUNDARIES ARE EXCLUSIVELY THE RESPONSIBILITY OF THE FEDERAL EXECUTIVE. UNDER THE CONSTITUTION AND APPLICABLE STATUTES THE LOUISIANA COURTS HAD NO POWER TO FIX NEW TOWNSHIP BOUNDARIES.

This proceeding squarely raises the question of the judicial power of state courts with respect to Federal township boundaries. The purpose and effect of the judgments of the Louisiana courts is clear. As the Court of Appeal said, it was assuming the authority to establish "the legal bounds of the two sections involved" (*Infra,* p. 36b).

It is our position that the Louisiana courts had no such power. This is so no matter how convinced they might be that the Federal surveyors were in error. The surveying of the public lands, the establishment of townships and sections within those lands and the final approval of township

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[4] Petitioners carefully preserved the Federal question. See page 239 of the transcript of trial in the District Court (R. 318), and pages 11 through 17 of the Petitioners La-Terre and Placid's Brief on Appeal to the Court of Appeal (R. Vol. I, following R. p. 369). In their petition to the Louisiana Supreme Court, the petitioners stated that "The basic issue, therefore, is one at law, *i.e.,* the right of the Court of Appeal to supercede [sic] the administrative branch of the United States Government, which is responsible for the establishment of the Governmental subdivision, by changing the official surveys, and hence the boundaries of those lands." (R. La. Sup. Ct. p. 14; Petition for Writ of Certiorari on Review, p. 14.)

plats have been the exclusive province of the Federal Executive for one hundred and eighty years.

The statutory scheme is clear. The corners and boundaries of Federal surveys approved by the Secretary of Interior or his predecessors "shall be established as the proper boundary lines of the sections." R.S. § 2396 (1875), now 43 U.S.C. § 752 (1964). State courts cannot survey Federal boundaries; they cannot approve Federal surveys; and they cannot correct mistakes in Federal surveys.

It is remarkable that the leading case establishing this proposition, *Cragin* v. *Powell*, 128 U.S. 691 (1888), involved one of the very Federal townships and the very same overlap between the two townships in this proceeding. There, too, the court below was struck by Connelly's error and had redrawn the line to reflect a "proper boundary." This Court reversed:

> "Whether the official survey made by Connelly is erroneous, or should give way to the extent of its discrepancies to the survey reported by McLeran, is a question which was not within the province of the court below, nor is it the province of this court to consider and determine. The mistakes and abuses which have crept into the official surveys of the public domain form a fruitful theme of complaint in the political branches of the government. The correction of these mistakes and abuses has not been delegated to the judiciary. . . . " (128 U.S. at 697.)
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> "The reason of this rule, as stated by Justice Catron in the case of *Haydel* v. *Dufresne*, is that 'great confusion and litigation would ensue if the judicial tribunals, state and federal, were permitted to interfere

and overthrow the public surveys on no other ground than an opinion that they could have the work in the field better done and divisions more equitably made than the department of public lands could do.'" (128 U.S. at 699)[5]

The Court below apparently thought it could reject the two approved surveys and redraw the boundaries, despite *Cragin,* because title to certain distant parcels—not involved here—had vested in private hands after Foster and Walker had done their work in 1831 and before the two later surveys were completed. (*Infra,* pp. 43-44b, 47b) This seems to have convinced the Louisiana court that the Surveyor General had no authority under Federal law thereafter to approve the Connelly and the Gorlinski surveys. We suggest that it is rather late to question the authority of the Surveyor General, particularly in this proceeding and particularly when that authority was and is clear under Federal law. As in *Cragin,* so here. Connelly's survey was completed and approved while the tracts at issue remained Government property and long prior to their transfer to the State or to private parties. The rights which vested under Foster and Walker were to parcels of land wholly unaffected by the Gorlinski resurvey (*Infra* pp. 47b-48b). Only a private landholder adversely affected

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[5] *Cragin* has been reaffirmed on numerous occasions. See, e.g., *Knight* v. *United Land Association,* 142 U.S. 161 (1891); *Stoneroad* v. *Stoneroad,* 138 U.S. 252 (1895); and *Russell* v. *Maxwell Land Grant Co.,* 158 U.S. 253 (1895). See also *Manual of Surveying Instructions,* (Bureau of Land Management, Dep't. of Interior, 1947 Ed.) p. 7.

> ". . . the boundaries and subdivisions of the public lands as surveyed . . . the record evidence of which consists of field notes and plats duly approved by the authorities constituted by law, are unchangeable after the passing of the title by the United States."

by the Gorlinski resurvey could complain, and even he could not prevent the resurvey. *Lane* v. *Darlington*, 249 U.S. 331 (1919). Union and Texas Gulf, whose interest in the property was acquired 100 years after the resurvey became official, certainly cannot complain.

The Louisiana Court of Appeal also expressed concern that unless it redefined the township boundaries so as to eliminate the overlap, it "would not settle any conflicting titles in the overlap . . . . " and stated that petitioners' arguments based on *Cragin* were:

> " . . . . the same thing as saying that the courts cannot pass upon conflicts in titles . . . . "

But, the case involved no conflicting titles. La-Terre obtained title to both of the overlapping sections at the same time and in the same instrument. Were this not true, and had La-Terre, for example, obtained title to Section 110 at one time and Union obtained title to the overlapping Section 13 at an earlier time, the Court could then have properly resolved the conflict by granting title to the overlap to Union as holding the more ancient title. Resolution of such problems in the future did not require the Louisiana courts to set aside official Government surveys.

In short, the effort of the Louisiana courts to "correct" official township boundaries settled for over one hundred years, on the basis of which the United States has transferred lands to the State, the State has transferred those lands to private parties and private parties have made contracts, was error. A new judge-made township cannot now be substituted for official boundaries established long ago by the Federal executive under Federal law.

II. THE JUDGMENT OF THE LOUISIANA COURTS, IF ALLOWED TO STAND, WOULD UPSET ESTABLISHED PUBLIC AND PRIVATE LANDHOLDINGS AND INSPIRE UNCERTAINTY AND LITIGATION.

By subdividing the 2,000,000 square miles of once public lands into townships, each six miles square, the Federal survey system has provided a simple and definite form of land identification and description, which permanently anchors in place the boundaries of all the public and private lands in the area.[6] The very essence of the Federal survey system is its stability. The Federal township lines are of critical importance to land holding and conveyancing in the western United States. Transfers in the areas carved out of the public domain are still in large measure based on Federal surveys. To suggest now, after almost two centuries, that those boundaries are subject to technical "correction" by any and all state courts opens up the possibility, we think, of substantial confusion and litigation.

We do not suggest that the decision below throws all private land titles into doubt. Most Federal surveys are doubtless accurate enough to withstand judicial attack for alleged "error." However, there is no doubt that technical mistakes do infect a large number of Federal surveys. In this very region, as the Court of Appeal found, "there are many conflicting titles due to this overlap that will most probably be vitally affected by the decision in this case." (*infra* p. 35b). More broadly, we have also examined the private Tobin survey services used by the oil and gas

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[6] Harrington, CADASTRAL SURVEYS FOR THE PUBLIC LANDS OF THE UNITED STATES, in *The Public Lands*, pp. 35, 36-37 (Carstensen ed. 1962); *Manual of Surveying Instructions.* (Bureau of Land Management, Dep't of Interior, 1947 ed.) pp. 6, 10-13; Keith, *Government Land Surveys and Related Problems*, 38 Iowa L. Rev. 86-115 (1952).

industry throughout southern Louisiana and have identified almost three dozen areas of overlaps or other incongruities in the Gulf Coast area alone which could from all appearances generate private litigation to "correct" old Federal boundaries. And we suggest that the history of Federal surveying indicates enough error throughout the West, where almost every state is similarly affected, to make this a matter of broad public and national concern.

Now, according to the Louisiana courts, any energetic potential claimant may petition for a "correction" of such errors on the basis of dusty original surveying records indicating that a surveyor made a mistake. The result was described in *Russell* v. *Maxwell Land Grant Co.*, 158 U.S. 253 (1895):

> " . . . in the nature of things a survey made by the government must be held conclusive against any collateral attack in controversies between individuals. There must be some tribunal to which final jurisdiction is given in respect to the matter of surveys, and no other tribunal is so competent to deal with the matter as the Land Department. None other is named in the statute. If in every controversy between neighbors the accuracy of a survey made by the government were open to question, interminable confusion would ensue. Take the particular case at bar; if the survey is not conclusive in favor of the plaintiff, it is not conclusive against it. So we might have the land grant company bringing suit against parties all along its borders, claiming that, the survey being inaccurate, it was entitled to a portion of their lands, and as in every case the question of fact would rest upon the testimony therein presented, we should doubtless have a series of contradictory verdicts; and out of those

verdicts and the judgments based thereon, a multitude of claims against the United States for return of money erroneously paid for land not obtained, or for a readjustment of boundaries so as to secure to the patentees in some other way the amounts of land they had purchased." (158 US at 258)

See also *Beard* v. *Federy*, 3 Wall. 478, 491-493 (1866).

III. CERTIORARI IS APPROPRIATE TO REVIEW THE JUDGMENT BELOW.

The purpose and effect of the decision below is clear. There was no independent state ground. Only by redrawing the Federal township boundaries could the court place the crucial well in question in the Union-Texas Gulf lease area. As the Court of Appeal said, it took unto itself the responsibility for "settling" a new "legal" line. This case is thus within this Court's jurisdiction under 28 U.S.C. § 1257(3).

Federal township boundaries are the province of the Federal Executive. The Federal Executive is bound to establish those boundaries in the fashion prescribed by Rev. Stat. §§ 2395 and 2396 (1875), as amended, 43 U.S.C. §§ 751, 752 (1964). The survey lines, once approved as the official township boundaries, "shall be established as the proper boundary lines of the sections." Rev. Stat. § 2396 (1875), as amended, 43 U.S.C. § 752 (1964). Petitioners' claim to the disputed area was anchored to the Federal plats. In overturning those plats, the Court below necessarily involved itself in a question of Federal authority exercised under Federal statute, within the meaning of 28 U.S.C. § 1257.

Graham v. *Gill*, 223 U.S. 643 (1912) was, like this, a dispute between private land claimants in a state court arising out of a clearly erroneous overlap between two separate Federal surveys. On writ of error from the Supreme Court of the State of Florida, defendant in error contended that the case presented no Federal question and hence was outside the Court's jurisdiction to review state court judgments. Chief Justice White held, however, that because the dispute involved the Federal statutory scheme setting out the manner in which Federal township boundaries were to be established, a "Federal question was necessarily involved and decided." . . . "In passing adversely on these objections [to admissibility of evidence concerning the Federal surveys] the trial court did not merely determine the weight or sufficiency of the evidence to prove a fact, but passed on the competency and legal effect of the evidence as bearing upon a question of Federal law; *viz.*, the effect of the requirements of § 2396, Rev. Stat. . . . as to the mode of surveying public lands. Thus a Federal question was presented and decided." 223 U.S. at 645, and so this Court had jurisdiction to review the State Court's judgment.

So here. The Court below made unusually clear its aim to override the statutory "mode of surveying public lands." Its judgment may therefore be properly reviewed by this Court.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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CHART 1

Lake Quitman, Southeastern Louisiana

CHART 2

Federal Township, 20S, Range 17E, Based on Connelly Survey of 1837

CHART 3

Federal Township, 20S, Range 18E, Based on Gorlinski Survey of 1855

CHART 4

"Corrected" Common Boundary of Federal Townships, Drawn by Louisiana Court of Appeal

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1119~~ 85

PLACID OIL COMPANY and LA-TERRE CO., INC.,

Petitioners,

—v.—

UNION PRODUCING COMPANY and TEXAS GULF PRODUCING COMPANY,

Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND/OR TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

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APPENDIX A

Constitutional and Statutory Provisions Involved

Article IV, Section 3, Clause 2 of the Constitution provides:

> "The Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; . . . . "
>
> U.S. Const. Art. IV, § 3.

Rev. Stat. § 453 (1875), as amended, 43 U.S.C. § 2 (1964):

"Duties Concerning Public Lands

> "The Secretary of the Interior . . . shall perform all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands; and also, such as relate to private claims of lands, ... "

Rev. Stat. § 2395 (1875), as amended, 43 U.S.C. § 751 (1964):

"Rules of survey.

> "The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square . . . .
>
> "Second. The corners of the townships must be marked with progressive numbers from the beginning; each distance of a mile between such corners must be

also distinctly marked with marks different from those of the corners.

"Third. The township shall be subdivided into sections, containing, as nearly as may be, six hundred and forty acres each. . . . The sections shall be numbered, respectively, beginning with the number one in the northeast section and proceeding west and east alternatively through the township with progressive numbers, until the thirty-six be completed.

• • •

"Eighth. These field books shall be returned to the Secretary of the Interior . . . who shall cause therefrom a description of the whole lands surveyed to be made out and transmitted to the officers who may superintend the sales. He shall also cause a fair plat to be made of the townships and fractional parts of townships contained in the lands, describing the subdivisions thereof, and the marks of the corners. This plat shall be recorded in books to be kept for that purpose; and a copy thereof shall be kept open at the office of the Secretary of the Interior . . . for public information . . . ."

Rev. Stat. § 2396 (1875), as amended, 43 U.S.C. § 752 (1964)

"Boundaries and contents of public lands; how ascertained.

"The boundaries and contents of the several sections . . . of the public lands shall be ascertained in conformity with the following principles:

Constitutional and Statutory Provisions Involved

"First. All the corners marked in the surveys, returned by the Secretary of the Interior . . . shall be established as the proper corners of sections . . . which they were intended to designate . . . .

"Second. The boundary lines, actually run and marked in the surveys returned by the Secretary of the Interior . . . shall be established as the proper boundary lines of the sections . . . for which they were intended, and the length of such lines as returned, shall be held and considered as the true length thereof. . . .

"Third. Each section . . . the contents whereof have been returned by the Secretary of the Interior . . . shall be held and considered as containing the exact quantity expressed in such return; . . . ."

Rev. Stat. § 2479 (1875), as amended, 43 U.S.C. § 982 (1964):

"Grant to States to aid in construction of levees and drains.

"To enable the several States . . . to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein—the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the 28th day of September, A.D. 1850, are granted and belong to the several States respectively, in which said lands are situated."

Constitutional and Statutory Provisions Involved

Rev. Stat. § 2480 (1875), as amended, 43 U.S.C. § 982 (1964)

"Lists and plats of lands, for governors of States.

"It shall be the duty of the Secretary of the Interior, to make accurate lists and plats of all such lands, and transmit the same to the governors of the several States in which such lands may lie, and at the request of the governor of any State in which said swamp and overflowed lands may be, to cause patents to be issued to said State therefor, conveying to said State the fee simple of said land."

Rev. Stat. § 2478 (1875), as amended, 43 U.S. § 1201 (1964):

"ENFORCEMENT OF PROVISIONS

"Power of Secretary or designated officer.

"The Secretary of the Interior . . . . is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this title not otherwise specially provided for."

APPENDIX B

Opinion of the District Court

STATE OF LOUISIANA

17TH JUDICIAL DISTRICT COURT

PARISH OF TERREBONNE

No. 21,710

UNION PRODUCING COMPANY, *et al.*,

VS.

PLACID OIL COMPANY, *et al.*

REASONS FOR JUDGMENT

This suit was brought to determine the south boundary of a lease granted by La-Terre Co., Inc. (called La-Terre), one of the defendants herein, in favor of Union Producing Company (called Union), one of the plaintiffs herein, and the north boundary of a lease granted by La-Terre in favor of Placid Oil Company (called Placid), the other defendant herein. The dispute arises from the following circumstances:

La-Terre is the owner of the following lands in Terrebonne Parish, Louisiana, which, according to the patents, contain the acreage shown below:

	ACRES
T-20-S, R-17-E	
Section 13 All except W/2 of SW/4	560.00
T-20-S, R-18-E	
Section 110 All	612.84

By instrument dated June 25, 1948, La-Terre granted in favor of Union an oil, gas and mineral lease covering, in addition to other lands which it also owned, these two sections by the above description.

By instrument dated August 24, 1949, Union selected a portion of the lands covered by the above lease and released the balance of these lands. The lands selected by Union were described by Union as follows:

Section	Description	Acreage
	Township 19 South, Range 17 East	
14	All	108.92
15	All	86.76
82	All fractional	121.24
	Township 20 South, Range 17 East	
1	All	640.00
2	E-½ of SE-¼	80.00
12	All	640.00
13	North 200 acres	200.00
	Township 19 South, Range 18 East	
81	Lots 4 and 5	69.12
83	All	404.80
84	All	451.92
	Township 20 South, Range 18 East	
108	All	517.36
109	All	640.00
110	North 400 Acres	400.00
111	All	96.72
	Total	4,456.84

(Emphasis by the Court)

The description of the lands so selected is shown in full and the two sections in question are underlined by the Court in order to illustrate the manner in which the acreages selected in the two sections here involved were described in relation to one another and to the other lands so selected.

Union then assigned an undivided one-half interest in its La-Terre lease to the other plaintiff herein, Texas Gulf Producing Company (called Texas Gulf).

All parties have alleged, and the record clearly establishes, that the easternmost part of Township 20 South, Range 17 East, and the westernmost part of Township 20 South, Range 18 East, overlap one another so that Section 13 of Township 20 South, Range 17 East, and Section 110, Township 20 South, Range 18 East, the two sections involved in this litigation, partially overlap one another. It is not disputed that this overlap was shown on the Tobin map of this area used by Union and was known by Union at the time it took its lease from La-Terre and made its selection thereunder.

On March 30, 1960, Placid acquired from La-Terre an oil, gas and mineral lease covering, in addition to other lands, all of Section 13 owned by La-Terre Co., Inc., except the north 200 acres thereof covered by Union's La-Terre lease, and all of Section 110, except the north 400 acres thereof covered by Union's La-Terre lease. Placid drilled three wells in Section 13, Township 20 South, Range 17 East, and Section 110, Township 20 South, Range 18 East, under its lease from La-Terre.

From the above it is clear that the south boundary of the mineral lease which La-Terre granted to Union Producing Company and the north boundary of the mineral lease which La-Terre granted to Placid Oil Company are the same line and that, as will be seen from the following

summary of plaintiffs' petition and defendants' answer, the basic legal issue involved in this suit is as to the proper procedure for locating on the ground the north 200 acres of Section 13, T 20 S, R 17 E, and the north 400 acres of Section 110, T 20 S, R 18 E.

The plaintiffs allege that their selection instrument was clear and unambiguous and have asked the Court to interpret this selection instrument in one of four alternative ways, all based on the theory that plaintiffs are entitled to a total of 600 acres on the ground located some place within these two sections. All interpretations urged by plaintiffs would locate the south lines of the areas so selected in Section 13 and in Section 110 considerably south of the location of those lines which defendants contend are correct. Three of plaintiffs' alternatives would deprive Placid of one of its producing wells.

Defendants, in answer, also aver that the selection description is unambiguous and contend that the description admits of only one interpretation. It is defendants' position that under the established jurisprudence of this State and under all applicable surveying principles, the areas so selected by plaintiffs in these two sections must be identified, from the description itself, in the following manner: As to the selected area in Section 13, T 20 S, R 17 E, by locating said section on the ground in accordance with the official survey of that township, and then by drawing a line at a sufficient distance south of the north line of Section 13 so as to include 200 acres; and as to the selected area in Section 110, T 20 S, R 18 E, by locating said section on the ground in accordance with the official survey of that township and then by drawing a line at a sufficient distance south of the north line of Section 110 so as to include

400 acres. Defendants contend that this procedure must be followed without regard to the fact that an overlap in the areas so identified may result from the overlap of the sections themselves.

The Court has considered the selection instrument, particularly including the description of the acreage selected by plaintiffs thereby, and has concluded that, under the following principles of law, the description of the acreage so selected by Union and now held by plaintiffs under their lease from La-Terre is unambiguous and must be interpreted in the manner contended by defendants.

It is axiomatic that a description from which a surveyor can locate the land and by means of which he is able to establish the boundaries of the land on the ground is sufficient to identify the property. 26 C.J.S. p. 643, Deeds, §30; *Canterberry* v. *Slade Brothers,* 232 La. 1081, 96 So. 2nd 4 (1957); *Dinwiddie* v. *Cox,* 9 So. 2nd 68 (La. App. 2nd Cir. 1942) (cert. den.).

And it is the settled jurisprudence of Louisiana that a sale by given bounds conveys only the property within such bounds, and that acreage designation appended to such specific descriptions do not enlarge the grant described by the specific bounds. *Blevins* v. *Manufacturers' Record Publishing Company,* 235 La. 708, 105 So. 2nd 392 (1958); *Motichek* v. *Perriloux,* 231 La. 849, 93 So. 2nd 190 (1957); *City of New Orleans* v. *Rathborne,* 209 La. 93, 24 So. 2nd 275 (1945); *W. B. Thompson & Co.* v. *McNair,* 199 La. 918, 7 So. 2nd 184 (1942); *Bender* v. *Chew,* 129 La. 849, 56 So. 1023 (1912). In effect, every interpretation urged by plaintiffs would require that this Court ignore, or alter, the actual boundaries of the sections in question as established by the official surveys, for in no other way can the descrip-

tion employed by plaintiffs in their selection instrument be interpreted so as to give them the 600 acres on the ground which they here seek.

Plaintiffs' position is untenable, because it is a rule of law—and property—in Louisiana that when lands have been disposed of by the government according to a line appearing on an official plat of a government survey, approved by the Surveyor General, the location of the line shown on the official plat is controlling. *State* v. *Aucoin,* 206 La. 786, 20 So. 2nd 136 (1944); *Leader Realty Company* v. *Lakeview Land Company,* 142 La. 169, 76 So. 599 (1917); *Cragin* v. *Powell,* 128 U.S. 691, 9 S.Ct. 203, 32 L. Ed. 566 (1888).

That rule is true even if there were an error in the government survey when originally made (e.g., an overlapping of two townships). For the Louisiana Supreme Court has repeatedly held that once the survey has been made official by the Surveyor General and lands have been disposed of by the government by reference thereto, the boundaries shown on the official plat are controlling, and the Court may not correct the same in any manner. *Leader Realty Co.* v. *Lakeview Land Co.,* supra; *Brott* v. *New Orleans Land Company,* 151 La. 134, 91 So. 653 (1922); *Carrere* v. *City of New Orleans,* 162 La. 981, 111 So. 393 (1926); *State* v. *Aucoin, supra.*

In *Carrere* v. *City of New Orleans,* the Court stated the rule as follows:

> "Whether a government survey as originally made is correct or incorrect is for the land department alone to determine, and as to which the courts have no jurisdiction except by original proceedings in equity. 10 Ency. of U. S. Supreme Court Reports, p. 80. That proposition was put at rest by the Supreme Court of

the United States in *Cragin* v. *Powell,* 128 U. S. 691, 9 S. Ct. 203, 32 L. Ed. 566. Thus:

> "'That the power to make and correct surveys of the public lands belongs to the political department of the government, and that, whilst the lands are subject to the supervision of the General Land Office, the decisions of that bureau in all such cases, like that of other special tribunals upon the matters within their exclusive jurisdiction, are unassailable by the courts, except by a direct proceeding; and that the latter have no concurrent or original power to make similar corrections, if not an elementary principle of our land law, is settled by such a mass of decisions of this court that its mere statement is sufficient.'" *Carrere* v. *City of New Orleans,* 162 La. 981, at pages 1012-1014, 111 So. 393, at page 104.

It is interesting to note that the United States Supreme Court case of *Cragin* v. *Powell,* cited above, involved one of the very townships here in litigation.

Defendants have introduced in evidence the pertinent sections of the 1947 *Manual of Instructions for The Survey Of The Public Lands Of The United States,* United States Department of the Interior, Bureau of Land Management, which show that the above rules for interpretation of this description as established by the courts are consistent with sound surveying principles as laid down by that Manual.

Section 394 of the *Manual,* for example, provides that:

> " • • • It is an obvious principle that a conveyance of land must describe the parcel to be conveyed so

that it may be specifically and exactly identified, and for that purpose the law directs that a survey be made. Under fundamental law the corners of the original survey are unchangeable. *Even if the original survey were poorly executed, it will still control the boundaries of land patented under it.*" (Emphasis by Court.)

To the same effect is the following quotation from Clark, *Surveying and Boundaries* (3rd ed.—1955), which, in Section 441, stipulates that:

"In construing a deed describing lands by the government survey, the court must ascertain the corners of the survey as actually established, and not as they ought to have been established; * * * "

The above principles of law are governing here and when applied to the facts in this case, necessitate a holding that:

1. The area selected by plaintiffs, being described in terms of sections and townships, must be located in accordance with the boundaries of those governmental subdivisions as established by the official surveys which created the same;

2. The G. F. Connelly survey of Township 20 South, Range 17 East and the Joseph Gorlinski survey of Township 20 South, Range 18 East, are independent surveys; the lines run and fixed on the ground by the respective surveyors of those two townships created the exterior and interior boundaries of those townships; and those boundaries cannot be changed or modified but exist now as they were originally surveyed; and

3. The overlap of these governmental subdivisions, having resulted from the approval by the Surveyor General of the Connelly Survey of Township 20 South, Range 17 East, and of the Gorlinski Survey of Township 20 South, Range 18 East, and from the transfer of lands out of both the federal and state governments in accordance with those surveys, is a fact which cannot be altered and does not change the proper method of identifying the lands selected by plaintiffs.

That these conclusions as to the proper principles to be applied in this interpretation of the description of the acreage selected by plaintiffs under their lease from La-Terre is not only correct in law, but conforms with sound surveying practices, is evidenced by the fact that on the trial of this case all three of the expert witnesses who testified as to surveying principles and procedures agreed that the only correct procedure for identifying the property so selected is in accordance with these principles. And this includes the expert witness called by the plaintiffs.

Defendants called Mr. C. E. Bridges as an expert witness in surveying and civil engineering with over 18 years of experience as an engineer of Louisiana Land & Exploration Company, having served as chief engineer responsible for the surveying and establishment of boundaries of the 650,000 acres of lands of that company in the State. Defendants also called Mr. Earl G. Harrington as an expert in the field of surveying and cadastral engineering and on the surveying principles and policies of the Bureau of Land Management. Mr. Harrington had been employed for over 50 years by the Department of the Interior, 21 of which years were spent in surveying work in the field, and the remainder in supervisory and technical work in Denver and Washington, and had served for ten years as

Cadastral Engineering Officer for the Bureau of Land Management and was directly in charge of technical execution of surveys pertaining to the public lands in Continental United States and Alaska.

Both Mr. Harrington and Mr. Bridges testified that the correct, and only correct, procedure for locating the property selected by Union in Section 13 is by re-establishing the corners and boundaries of Section 13 in accordance with Connelly, the approved government survey of that township, and then by identifying an area within said Section 13 sufficiently South of the North line of said section so as to encompass an area of 200 acres. They further each testified that the proper method of locating the property selected by Union in Section 110 is by re-establishing the corners and boundaries of Section 110 in accordance with Gorlinski, the approved government survey of that township, and then by establishing an area within said Section 110 sufficiently South of the North line of said section so as to encompass an area of 400 acres. Both witnesses testified categorically that the fact that these sections overlap on the ground does not in any way alter their opinion as to the correct method of locating the property so selected.

When Mr. Clifford Smith, the expert witness called by plaintiffs, was asked on cross-examination to show how he would interpret and locate the description of the property in Sections 13 and 110 selected by Union Producing Company, he followed the identical procedure which was outlined by Messrs. Harrington and Bridges and arrived at the same identification of the lands so selected.

Both Mr. Harrington and Mr. Bridges testified that they had examined the plats attached to the petition on which are represented the four interpretations which plaintiffs

urge on the Court and that they have found that not one of these interpretations of the land selected is in accordance with sound surveying procedures.

It is additionally significant that at no point during Mr. Smith's testimony did he state that any one of said four interpretations, although they are all shown on plats prepared by his office, constitutes the proper interpretation of the selection description. In fact, on cross-examination Mr. Smith testified that these four interpretations which were represented on the plats prepared by the office of T. Baker Smith & Son and attached to plaintiffs' petition were not the interpretations of T. Baker Smith & Son of the correct method of identifying the property so selected by the plaintiffs, but that "they are interpretations that we were instructed to picture upon these plats allowing certain surveys in the area to control over other surveys." There was therefore no expert testimony in support of any one of plaintiffs' four interpretations. Mr. Harrington, called by the defendants, and Mr. Smith, called by the plaintiffs, testified that there was no call in the description in the selection instrument which would support the plaintiffs' contention that the description should be interpreted so as to yield 600 acres.

Moreover, the Court is satisfied that even were the description in plaintiffs' selection instrument ambiguous, as implied by plaintiffs' alternative argument, the actions of the plaintiffs, both in their internal affairs and in the documents and plats filed in the public records, clearly establish that it was the plaintiffs' intention to select, not 600 acres in Section 13 and Section 110, but the North 200 acres of Section 13 and the North 400 acres of Section 110, totaling, on the ground, an actual area of substantially less than 600 acres.

On cross-examination Mr. Walter Spears, Executive Vice-President of Union, acknowledged that every map in the plaintiffs' files which was prepared between 1949, the date of the selection instrument, and March 23, 1960, when the plaintiffs learned of La-Terre's lease to Placid, showed the South boundary of plaintiffs' lease from La-Terre (which is the boundary here in dispute) to lie North of the position here urged by plaintiffs. In fact, plaintiffs' maps show that during those years plaintiffs located this southern boundary in almost the identical position in which it is placed by defendants in the proof made on the trial of this case. As was frankly admitted by Mr. Spears, when plaintiffs learned that La-Terre had leased the acreage in dispute to Placid, Union changed the location of their lower lease line on their maps to the more southerly location which they now urge upon this Court.

Of equal significance to the Court in this area of the proper interpretation of plaintiffs' selection description, still assuming, for the sake of this discussion only, that the description is ambiguous and that evidence as to the intent of the parties is needed or in order, is the fact that the plaintiffs did not produce one document or one map which had been prepared by or for them during the period from 1949 to March 23, 1960, which supports or agrees with any one of the four interpretations urged on the Court by plaintiffs in this suit. In fact, as previously pointed out, every such document and map in this record is consistent with the defendants, and this Court's, interpretation of the description in the selection instrument.

The Court is certain that if the plaintiffs have selected only the north 200 acres of Section 13, Township 20 South, Range 17 East, and had not selected the North 400 acres of

Section 110, Township 19 South, Range 18 East, or vice-versa, there would be no dispute between the parties for the plaintiffs would use the same surveying principles as the defendants to locate this acreage. Yet, the plaintiffs contend that because these two tracts were selected at the same time and in the same instrument, a different method of locating the acreage should be employed. We believe such a position to be untenable.

In support of the various alternative contentions, plaintiffs mainly rely on the case of *Louisiana Furs, Inc.* vs. *State,* 191 Louisiana 964, 186 So. 840 (1939). The court has carefully considered this case but does not find that the facts in that case nor the principles laid down by the Court cover the situation in this case.

For these reasons, judgment is being rendered on this day in favor of defendants and against plaintiffs, dismissing plaintiffs' suit at their cost and decreeing and declaring that the southern boundary of plaintiffs' lease from La-Terre Co., Inc. in Section 13, T 20 S, R 17 E, and Section 110, T 20 S, R 17 E, which is also the northern boundary of Placid's lease from La-Terre Co., Inc., to be a line ABCDE, shown on a plat attached to said judgment and described in said judgment by reference to Lambert State Plane Coordinates (South Zone).

Houma, Louisiana, October 7th, 1964.

P. DAVIS MARTINEZ, *Judge,*
17th Judicial District Court,
Parish of Terrebonne, Louisiana,
Division "B".

Judgment of the District Court

STATE OF LOUISIANA

17TH JUDICIAL DISTRICT COURT

PARISH OF TERREBONNE

No. 21,710

UNION PRODUCING COMPANY, *et al.*,

VS.

PLACID OIL COMPANY, *et al.*

JUDGMENT

This case came on for trial, pursuant to previous regular fixing, with all parties present and represented, and the Court, considering the law and evidence to be in favor of the defendants, and against the plaintiffs, for written reasons this day assigned;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of the defendants, Placid Oil Company and La-Terre Co., Inc., and against the plaintiffs, Union Producing Company and Texas Gulf Producing Company, declaring and decreeing that the line ABCDE which is shown on the plat of survey by C. E. Bridges, C.E., which is attached hereto and paraphed for identification herewith, constitutes the southern boundary, in Section 13, Township 20 South, Range 17 East, and Section 110, Township 20 South, Range 18 East, Terrebonne Parish, Louisiana, of

that certain oil, gas and mineral lease granted by La-Terre Co., Inc., in favor of Union Producing Company, dated June 21, 1941, recorded on October 1, 1941, in Book 164 at Page 251 of the Conveyance Records of Terrebonne Parish, Louisiana, as amended and supplemented by instruments dated January 4, 1949, and August 24, 1949, recorded in Book 166 at Pages 212 and 539 respectively of the Conveyance Records of Terrebonne Parish, Louisiana, and constitutes the Northern boundary in said Sections 13 and 110 of that certain oil, gas and mineral lease granted by La-Terre Co., Inc., in favor of Placid Oil Company, dated March 30, 1960, a notice of which is recorded in Book 295, at Page 266 of the Conveyance Records of Terrebonne Parish, Louisiana; said line ABCDE being the common boundary between those leases in said sections.

Line ABCDE is more fully described in terms of Lambert State Plane Coordinates (South Zone) and by reference to said plat as follows:

> Point A lies on the Western boundary of Section 13, T 20 S, R 17 E and is identified by Lambert Grid Coordinates X = 2,205,705.75 and Y = 244,861.40; THENCE North 88° 57′ 33″ East 2,288.25 feet to Point B, which point is identified by Lambert Grid Coordinates X = 2,207,993.62 and Y = 244,902.96; THENCE South 1° 12′ East 315.22 feet to Point C, which point is identified by Lambert Grid Coordinates X = 2,208,000.23 and Y = 244,587.81; THENCE North 88° 48′ East 2,994.55 feet to Point D, which point is identified by Lambert Grid Coordinates X = 2,210,994.12, and Y = 244,650.52; and THEN CONTINUING on that same course of North 88° 48′ East to Point E, which point is identified by Lambert Grid Coordinates X = 2,212,960.62 and Y = 244,691.71.

Judgment of the District Court

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs' suit is dismissed and all costs of these proceedings are assessed against the plaintiffs.

JUDGMENT RENDERED, READ AND SIGNED in Open Court, at Houma, Parish of Terrebonne, Louisiana, this 7th day of October, A.D., 1964.

P. DAVIS MARTINEZ, *Judge*,
17th Judicial District Court,
Parish of Terrebonne, Louisiana,
Division "B".

MAP SHOWING
SECTIONS 12 AND 13 OF T20S-R17E BASED ON SURVEY MADE BY G. F. CONNELLY, U. S. DEPUTY SURVEYOR IN 1837 AND SECTIONS 108, 109, 110 AND 111 OF T20S-R18E BASED ON SURVEY MADE BY JOSEPH GORLINSKI, U. S. DEPUTY SURVEYOR IN 1855; TOGETHER WITH THE NORTH 200 ACRES OF SAID SECTION 13 AND THE NORTH 400 ACRES OF SAID SECTION 110, TERREBONNE PARISH LOUISIANA.

SCALE OF FEET
0 1000 2000 3000 4000 5000

APPROVED: _____ CIVIL ENGINEER
C. E. BRIDGES

LAMBERT GRID

Opinion and Judgment of the Court of Appeal

COURT OF APPEAL OF LOUISIANA

FIRST CIRCUIT

No. 6408

UNION PRODUCING COMPANY *et al.*,

Plaintiffs-Appellants,

v.

PLACID OIL COMPANY *et al.*,

Defendants-Appellees.

July 1, 1965

Rehearing Denied Sept. 27, 1965

Writ Refused Nov. 12, 1965

Petition for a declaratory judgment to determine the correct ground location of property covered by oil and gas leases. The 17th Judicial District Court, Parish of Terrebonne, P. Davis Martinez, J., fixed the ground location as contended by the defendants, and the plaintiffs appealed. The Court of Appeal, Ellis, J., held that where two oil companies each had leases covering certain acres in two townships and sections and the north-south boundary line between the two leases was completely dependent upon location of the correct range line and where there were three different range lines in three different locations as a result of three different government surveys in 1831, 1837, and 1855, so that boundaries of the two townships and sections within different range lines overlapped, court would fix

the boundary line as being the range line established by the 1831 survey, as such survey was approved by the government in 1832 and was used to dispose of and grant patents to land.

Reversed and rendered.

Before ELLIS, LOTTINGER, LANDRY, REID and BAILES, *JJ.*

ELLIS, *Judge.*

Plaintiffs, Union Producing Company, hereinafter referred to as Union, and Texas Gulf Producing Company, hereinafter referred to as Gulf, were the owners in equal indivision of one certain gas, oil and mineral lease originally acquired by Union from the defendant, La-Terre Company, Inc., hereinafter referred to as La-Terre, covering 4,456.84 acres of land and included therein were certain lands situated in Terrebonne Parish, Louisiana described as follows:

Section	*Description*	*Acreage*
	Township 20 South, Range 17 East	
13	North 200 acres	200.00
	Township 20 South, Range 18 East	
110	North 400 acres	400.00

There is an admitted overlap of the boundaries of Township 20 South, Range 17 East and Township 20 South, Range 18 East and consequently an overlap of the boundaries of Section 13, Township 20 South, Range 17 East and Section 110, Township 20 South, Range 18 East, brought about by different locations of the range line between Ranges 18 and 17 East pursuant to a government survey by Foster and Walker, Surveyors, in 1831 and approved April 5, 1832, by the Surveyor-General of Township 20

South, Range 18 East and a resurvey or recheck of the Foster and Walker survey by Gorlinski in 1855, approved in 1856, wherein he moved the range line as established by Foster and Walker approximately 27 chains farther west, and a partial survey of Township 20 South, Range 17 East by G. F. Connelly in 1837, approved in May of 1842, wherein he placed the east boundary or range line of Township 20 South, Range 17 East some 3000 feet farther to the east than the Gorlinski and Foster and Walker surveys, measured from the location of the range line at the northwest corner of Township 20 South, Range 18 East.[1]

At this stage, we hereby attach and make a part of this opinion Plat A as attached to the brief of plaintiffs which clearly shows the three different locations of the range line as made by Foster and Walker, by G. F. Connelly of Township 20 South, Range 17 East and a resurvey of the Foster and Walker survey of Township 20 South, Range 18 East by Gorlinski.

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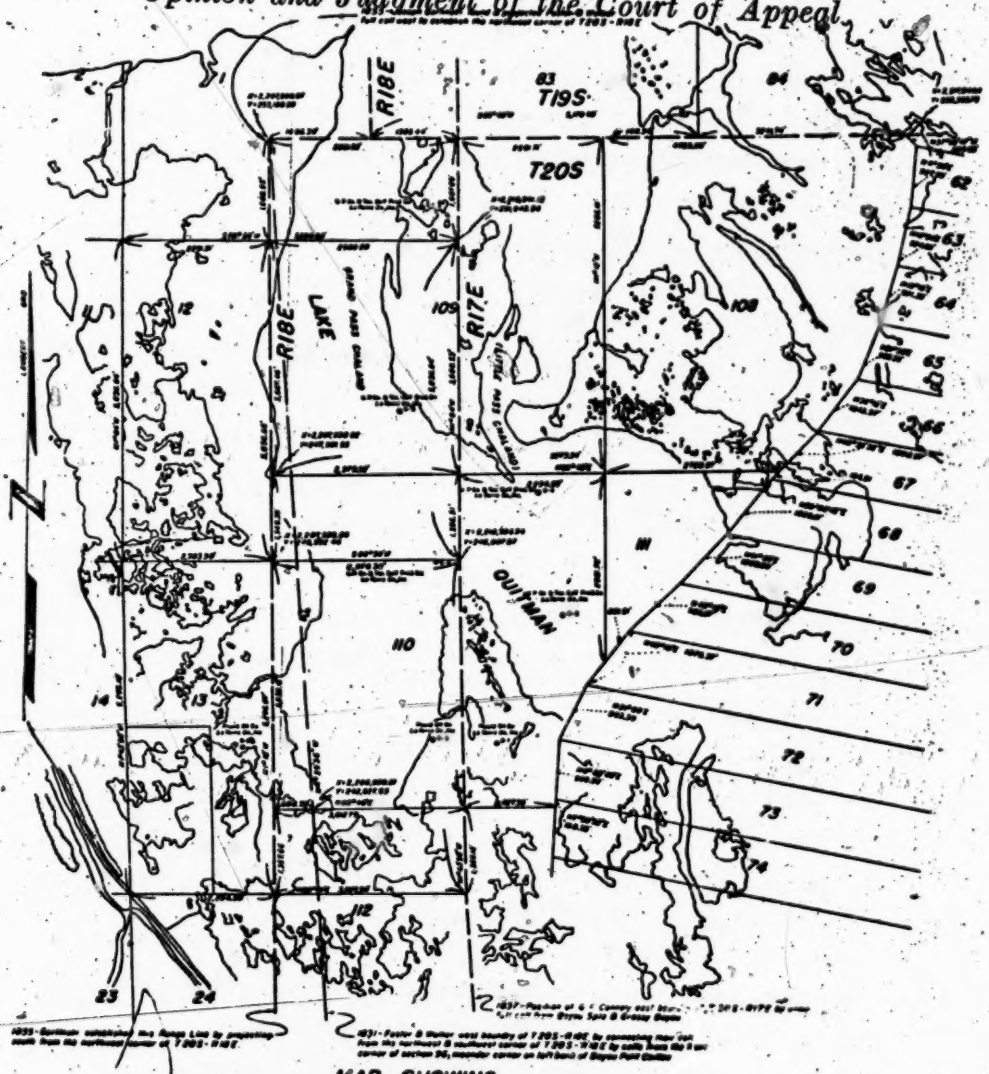
[1] The location of the northwest corner of Township 20 South, Range 18 East was identical in the Foster and Walker survey and the resurvey by Gorlinski. From this point, however, the Foster and Walker survey veered south four degrees while the Gorlinski resurvey was run due south from the northwest corner and resulted in a distance between the location of the southeast corner according to the Foster and Walker survey and the resurvey by Gorlinski of Township 20 South, Range 18 East of approximately 27 chains.



MAP SHOWING
SECTION 109, 108, 110, 111, 12 & 13 IN T20S-
R18E & 17E FOR UNION PRODUCING CO.

SCALE OF FEET
4000 500 0 1000 2000 3000 4000 5000

OFFICE OF T. BAKER SMITH & SON CIVIL ENGINEERS
NOVEMBER 20, 1930 HOUMA, LOUISIANA

APPROVED: Baker Smith CIVIL ENGINEER
Registered in accordance with La Law 51

PLAT "A"

Opinion and Judgment of the Court of Appeal

On March 30, 1960, Placid Oil Company, hereinafter referred to as Placid, acquired from La-Terre an oil and gas lease covering, among other lands, the following described land:

"Township 20 South, Range 17 East

Section 13, All except W/2 of SW/4, and also except the North 200 acres of said section which is presently covered by a mineral lease granted Union Producing Company, dated June 21, 1948, and recorded in Conveyance Book 164, Folio 251, Entry No. 76813, as supplemented by instrument of selection dated August 24, 1949, both of record in Terrebonne Parish, Louisiana;

"Township 20 South, Range 18 East

Section 110, All, except the North 400 acres of said section which is presently covered by a mineral lease granted Union Producing Company, dated June 21, 1948, and recorded in Conveyance Book 164, Folio 251, Entry No. 76813, as supplemented by instrument of selection, dated August 24, 1949, both of record in Terrebonne Parish, Louisiana."

Due to the overlap of Section 13, Township 20 South, Range 17 East and of Section 110, Township 20 South, Range 18 East, a dispute arose between the interested parties as to the ground location of the property in Terrebonne Parish leased by La-Terre to Union and described as the North 200 acres of Section 13, Township 20 South, Range 17 East and the North 400 acres of Section 110, Township 20 South, Range 18 East. Union and Gulf contend that, regardless of the overlap, it is entitled to 600 acres, either from the North ½ of Sections 13 and 110 as

a whole without regard to an overlap under the authority of holding of the Louisiana Supreme Court in Louisiana Furs, Inc. v. State, 191 La. 964, 186 So. 842,[2] decided in 1939, or 200 acres in the North ½ of Section 13 and 400 acres in the North ½ of Section 110 after a determination by the Court of the common range line between the two sections which of course would be the range line between Township 20 South, Range 17 East and Township 20 South, Range 18 East, whereas Placid and La-Terre contend that no one has authority to change the range lines and that the North 200 acres of Section 13, Township 20 South, Range 17 East and the North 400 acres of Section 110, Township 20 South, Range 18 East must be located on the ground with full acceptance of the location of the range line between the two townships and sections in accordance with the re-survey by Gorlinski and Connelly. In other words, it is their contention that location of the North 200 acres of Section 13, although it would overlap into the North 400 acres of Section 110 so that there would be 130 acres common to Sections 13 and 110 included in the description which of course would result in Union and Gulf receiving 130 acres less than the 600 acres called for by the description in their lease, must be made as if the overlap did not exist which would decrease plaintiffs-appellants' acreage by approximately 130 acres. The main question which must be answered is the ground location of the south boundary of Union and Gulf which would be the north boundary of Placid under the terms of its lease from La-Terre.

Because of the difference between the parties as briefly outlined above, plaintiffs have proceeded under the author-

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[2] We do not consider this case decisive of the issue herein and will not consider the contention of plaintiffs based thereon.

ity of the Uniform Declaratory Judgments Act, LSA-R.S. 13:4231-13:4246, and seek a judgment determinative of the ground location of the property hereinabove described as being covered in the lease from La-Terre to Union. After a trial on the merits which necessitated the introduction of the testimony of a number of witnesses and scores of exhibits, the District Court fixed the ground location of the North 200 acres of Section 13, Township 20 South, Range 17 East and the North 400 acres of Section 110, Township 20 South, Range 18 East as contended by the defendants-appellees, Placid and La-Terre. The lower court recognized the east boundary of Township 20 South, Range 17 East as fixed by G. F. Connelly in 1837 and the west boundary of Township 20 South, Range 18 East as located by the resurvey of Gorlinski, approved in 1856, of the Foster and Walker survey made in 1831 and approved in 1832. Of course, each of these lines, i. e., the Connelly line which purportedly established the east boundary of Township 20 South, Range 17 East, would ordinarily be considered as also the west boundary of Township 20 South, Range 18 East. This purported range line by Connelly is located more than 3000 feet east of the line which Gorlinski established by his survey of the Foster and Walker survey as being the west boundary of Township 20 South, Range 18 East and which would be ordinarily the east boundary of Township 20 South, Range 17 East. In other words, we have three different locations of the range lines which affected Section 13 and Section 110 and caused the lines of these sections to overlap with a common acreage of approximately 130 acres. For better understanding of the contention of defendants-appellees and the decision of the lower court which approved of their ground location of the North 200 acres of Section 13 and the North 400

acres of Section 110, we annex a copy of defendants' Exhibit 61 as attached to their briefs which is a map showing in part their contention and the holding of the court which accepts the range line as surveyed by Connelly as being the east boundary of Section 13, Township 20 South, Range 17 East and the range line established by the resurvey made by Gorlinski as being the west boundary of Section 110 Township 20 South, Range 18 East. Plaintiffs have appealed from this judgment.

MAP SHOWING
SECTIONS 12 AND 13 OF T20S-R17E BASED ON SURVEY MADE BY G. F. CONNELLY, U. S. DEPUTY SURVEYOR IN 1837 AND SECTIONS 108, 109, 110 AND 111 OF T20S-R18E BASED ON SURVEY MADE BY JOSEPH GORLINSKI, U. S. DEPUTY SURVEYOR IN 1855; TOGETHER WITH THE NORTH 200 ACRES OF SAID SECTION 13 AND THE NORTH 400 ACRES OF SAID SECTION 110, TERREBONNE PARISH LOUISIANA.

SCALE OF FEET
0 1000 2000 3000 4000 5000

APPROVED C. E. Simpson CIVIL ENGINEER
C. E. SIMPSON

Defendants' Exhibit 61
(D-61)

A more detailed discussion of the facts is necessary to a decision in this case. On June 21, 1948, La-Terre, as lessor, granted to Union, as lessee, an oil, gas and mineral lease covering and affecting approximately 18,056 acres of land situated in Terrebonne and in Lafourche Parishes, Louisiana. The lands situated in Terrebonne Parish, Louisiana, involved in this suit were described in said lease as follows:

"

Section	*Description*	*Acreage*
	• • •	
	Township 20 South, Range 17 East	
13	All except W½ of SW¼	560.00
	• • •	
	Township 20 South, Range 18 East	
110	All	612.84"

On January 4, 1949, recorded on January 31, 1949, in the conveyance records of Terrebonne Parish, Louisiana, it was agreed by and between La-Terre and Union that Paragraph 4 of the La-Terre—Union lease be amended so as to extend for a period of ten weeks from and after June 21, 1949 or until August 30, 1949, the time within which Union had to elect whether it would make a selection or selections of lands to be retained under the original lease (18,056 acres), or whether it would surrender all rights to said lease. It further provided that if it selected lands in accordance with such provision it was to pay $10.00 per acre as a consideration for the leasing of such selected lands.

Accordingly, by instrument dated August 24, 1949, recorded on September 9, 1949, in the conveyance records of Terrebonne Parish, Louisiana, executed by and between La-Terre and Union, the latter selected 4,456.84 acres of certain lands situated in Terrebonne Parish, Louisiana, for

which it paid $10.00 per acre, or $44,568.40, as per agreement, and included in this selected acreage was the following: In Township 20 South, Range 17 East, Section 13, North 200 acres, containing 200 acres, and in Township 20 South, Range 18 East, Section 110, North 400 acres, containing 400 acres.

Neither Union nor La-Terre, nor anyone on their behalf, had actually surveyed, run or marked on the ground any of the boundaries of the governmental subdivisions referred to in the selection instrument at the time the lease and selection instrument were executed on August 29, 1949. However, on this date, according to Article 10 of a stipulation entered into by and between Union, Gulf, Placid and La-Terre (Exhibit P-1 Vol. 3), both Union and Placid had in their possession a copy of a plat or map prepared by "Edgar Tobin Aerial Surveys" in the year 1938, which each had purchased from the latter, and this aerial survey showed the overlap between the Gorlinski resurvey of the Foster and Walker line and the Connelly line. It does not show the four degree line as established by Foster and Walker in 1831, approved in 1832. This aerial map by Edgar Tobin Aerial Surveys is marked as Exhibit E in Vol. 4 of the transcript.

For accuracy as to the contents of Article 10 of the stipulation, P-1, in Vol. 3 above referred to, we quote:

"10

"It is agreed that the exhibit which is attached hereto and marked 'Exhibit E', is a true and correct copy of a plat or map prepared by Edgar Tobin Aerial Surveys in the year 1938, and that Union Producing Company and Placid Oil Company bought from Edgar Tobin Aerial Surveys and, therefore, owned and had in their

possession a copy of said plat or map prior to the year 1948."

At this point we will consider the contention of Placid—La-Terre that Union at the date of its selection had full knowledge of the overlap as they had a Tobin Aerial Map which showed this overlap, and therefore they knew or are charged with knowledge that the land described in Sections 13 and 110 did not contain 600 acres and they did not intend to select 600 acres.

Mr. W. H. Spears, Executive Vice President of Union, testified that the selection made was not in any wise based upon the Tobin Aerial Survey map but was based upon a geophysical survey by Union to determine what area and to what extent they wished to select land in Sections 13 and 110 which resulted in the selection of 600 acres in the two sections being the North 200 acres of Section 13, Township 20 South, Range 17 East and the North 400 acres of Section 110, Township 20 South, Range 18 East. We fail to see any substantial advantage to be gained by any one of these parties in this suit from the fact that Union and Placid both had a copy of the 1938 Tobin aerial map which showed generally an overlap but was limited in its accuracy in that it did not show the line as surveyed by Foster and Walker in 1831. The record reveals that Union, Placid and La-Terre on the date which La-Terre executed the lease to Placid, March 30, 1960, had full knowledge of the overlapping situation for in 1959 Placid had caused a survey to be made of Township 20 South, Range 17 East and Township 20 South, Range 18 East and specifically of Section 13 of Township 20 South, Range 17 East and of Section 110 of Township 20 South, Range 18 East. Additionally, Placid had its surveyors attempt to locate the

North 200 acres of Section 13 and the North 400 acres of Section 110 "according to sound surveying principles so as to establish the north line of this proposed lease." See Placid and La-Terre brief, pages 4 and 5. The record reveals, and it is admitted in Union—Gulf's brief, that just prior to the acquisition by Placid of its lease in March 1960 the former had made a survey on the ground of Sections 13 and 110 and: " * * * for the first time learned for a fact that the governmental survey of Section 13 and two governmental surveys of Section 110 did not conform and harmonize but actually overlapped each other by a distance of approximately 3000 feet * * * ".

We do not believe from the record that any party to this suit can gain any advantage or estoppel from the fact that they had in their possession the Tobin map of 1938. On the one hand, there is no doubt that Union in making its selection was looking for minerals and not additional acreage and therefore depended upon a geophysical survey, and, on the other hand, Placid placed no dependence in the Tobin aerial survey for prior to the date that it took its lease from La-Terre it had a complete survey made of the entire area and was fully aware of the entire situation in regard to the overlap and evidently decided to take its chance in a lawsuit if it came to that stage. As a matter of fact, La-Terre is in no better position along this line than the other parties to the suit for they prepared the original lease given by it to Union in which they described Section 13, Township 20 South, Range 17 East as containing 560 acres, which is less the W½ of the SW¼ and as shown on the government approval of this section to the State, and also described Section 110, Township 20 South, Range 18 East as containing 612.84 acres and it was upon this acreage that Union subsequently made its selection in

accordance with the amendment of its prior lease and subsequent to its geophysical survey.

Union made an offer to La-Terre for a lease of additional acreage which it subsequently leased to Placid. As its offer was not as advantageous to La-Terre as Placid's, the latter secured the lease. Prior to the final completion of the lease to Placid, La-Terre, being fully aware of the overlap and not really knowing where the southern boundary of Union's lease might be placed, considered the matter thoroughly before deciding upon the description to be placed in Placid's lease. This is shown by some 29 exhibits in the record which is correspondence between the officers, attorneys and employees of La-Terre, and is included in Exhibits P-11—P-38. This latter offering was a letter written by Mr. J. B. Miller, attorney for La-Terre, to Mr. Earle L. Peters, outlining the description to be placed in the Placid lease from La-Terre and we quote:

"March 9, 1960
File 28502

"Mr. Earle L. Peters
633 National Bank Building
Toledo, Ohio

"Dear Mr. Peters:

"Upon receipt of your letter of March 2, 1960, I telephoned O. R. Carter, as a result of which he wrote you the March 4th letter, a copy of which was sent me.

"I have discussed with both Bob and Marshall the matter of a description for any lease which you might grant in the Lapeyrouse-Dulac Area in T20S, Rs.17&18E, and we all agree that the description should be by governmental subdivisions as now appears in your

printed list of lands, even though some of the sections may overlap each other. In doing so, however, it is necessary to except such portions of this area as are presently covered by the lease to Union Producing Company, and it is also well to bear in mind that the acreage appearing on your printed list does not represent the true acreage. Assuming that you will lease all of the area which is not presently covered by the Union lease, the following description could be utilized:

Township 20 South, Range 17 East

Section 13, All, except W/2 of SW/4, and except those portions presently covered by the lease granted to Union Producing Company dated June 21, 1948, and recorded in Conveyance Book 164, Folio 251, Entry No. 76813, Terrebonne Parish, Louisiana;

Section 24, NE/4;

Township 20 South, Range 18 East

Section 110, All, except those portions presently covered by the lease granted to Union Producing Company dated June 21, 1948, and recorded in Conveyance Book 164, Folio 251, Entry No. 76813, Terrebonne Parish, Louisiana;

Section 112, Lots 3 and 4; E/2 of SW/4; NW/4 of SW/4; NW/4;

Section 113, NE/4 of NW/4.

"I have checked with Marshall Vignes, and he advises me that the total acreage comprised within the above

description equals 725.89 acres, which includes 597.19 acres of land as to which La-Terre apparently has a clear title, plus 128.70 acres which appear to be in conflict with the titles of others. I do not feel, however, that it would be wise to set forth any acreage figures in any lease which you might grant covering this property, but simply call this to your attention for purposes of negotiation.

"I also call your attention to the fact that the 128.70 acres mentioned as being in conflict are located in Sections 112 and 113 of T20S, R18E, and are in conflict with lands owned by other parties in Section 24, T20S, R17E. For this reason, I do not believe it would be desirable to warrant title to these lands in any lease.

Yours sincerely,
s/ J. B. Miller
J. B. Miller"

Accordingly, on March 30, 1960, La-Terre executed the lease to Placid, covering among other lands, the following property pertinent to this suit described as follows:

"Township 20 South, Range 17 East

Section 13; All, except W/2 of SW/4, and also except the North 200 acres of said section which is presently covered by a mineral lease granted Union Producing Company, dated June 21, 1948, and recorded in Conveyance Book 164, Folio 251, Entry No. 76813, as supplemented by instrument of selection dated August 24, 1949, both of record in Terrebonne Parish, Louisiana;

* * *

"Township 20 South, Range 18 East

Section 110, All, except the North 400 acres of said section which is presently covered by a mineral lease granted Union Producing Company, dated June 21, 1948, and recorded in Conveyance Book 164, Folio 251, Entry No. 76813, as supplemented by instrument of selection, dated August 24, 1949, both of record in Terrebonne Parish, Louisiana."

From the above and foregoing description it is self-evident that the south boundary of Union's lease, which would be the north boundary of Placid's lease from La-Terre is completely dependent upon the location of the North 200 acres of Section 13, Township 20 South, Range 17 East and the North 400 acres of Section 110, Township 20 South, Range 18 East. It is also evident that the parties could not agree as to location of this line and hence this suit.

There is also in the record (Exhibit P-44) a letter from Union—Gulf to Placid after the latter had taken out a permit to drill its first well under the above lease from La-Terre which put Placid on notice that if the well denoted as B-1 on the map was found to be on land covered by Union—Gulf's lease the latter would assert all their legal rights. Placid completed wells B-1 and B-3 in Section 110 and also drilled a well B-2 in Section 13 and all were producers.

[1] We deem it advisable to state the basic arguments made by defendants-appellees in their brief which must be considered in arriving at a decision herein. In their brief, defendants-appellees state under the head or argument "For example, it is axiomatic that a description from which

a surveyor can locate the land and by means of which he is able to establish the boundaries of the land on the ground is sufficient to identify the property. 26 C.J.S. p. 643, Deeds, § 30; Canterberry v. Slade Brothers, 232 La. 1081, 96 So.2d 4 (1957); Dinwiddie v. Cox, 9 So.2d 68 (La.App.2nd Cir. 1942) (cert. den.)."

In answer to the above statement, we have no quarrel with the general statement or the law cited. However, the problem which presents itself is brought about by three government surveys which have produced a large overlap in Township 20 South, Ranges 18 and 17 East and many conflicting titles. In the case under consideration, the description is perfectly understandable, nothing ambiguous per se, it is couched in simple language and is not a weak description but a strong one and there would be no problem whatsoever for a surveyor to locate the land therein described on the ground if Section 13, Township 20 South, Range 17 East and Section 110, Township 20 South, Range 18 East had no overlap lines, but one range line which served as a common boundary between them. We do not deem this a surveying problem until the courts locate the proper boundaries of these two sections and then it will be a simple matter for a competent surveyor to survey the North 200 acres of Section 13 and the North 400 acres of Section 110. As this record reveals, there are many conflicting titles due to this overlap that will most probably be vitally affected by the decision in this case. La-Terre has other conflicting titles as shown by this record.

Defendants-appellees next make the argument that:

"And it is the settled jurisprudence of Louisiana that a sale by given bounds conveys only the property within such bounds, and that acreage designations ap-

pended to such specific descriptions do not enlarge the grant described by the specific bounds. Blevins v. Manufacturers' Record Publishing Company, 235 La. 708, 105 So.2d 392 (1958); Motichek v. Perriloux, 231 La. 849, 93 So.2d 190 (1957); City of New Orleans v. [Joseph] Rathborne [Land Co.], 209 La. 93, 24 So.2d 275 (1945); W. B. Thompson & Co. v. McNair, 199 La. 918, 7 So.2d 184 (1942); Bender v. Chew, 129 La. 849, 56 So. 1023 (1912)."

The above is a sound argument and supported by the authorities cited. However, the question which must be first settled is the legal bounds of the two sections involved here because of the overlapping surveys. Once the boundaries of Section 13, Township 20 South, Range 17 East and Section 110, Township 20 South, Range 18 East are legally fixed it will be a simple matter to locate the property as described. However, we do not believe the above jurisprudence is apposite to the problem as we are concerned with a definite description "the *North 200* acres and the *North 400* acres." The acreage cannot be ignored.

We will now consider the main defense set forth in the defendants-appellees' answer to the plaintiffs-appellants' suit and which was accepted by the lower court as one of the main reasons for his judgment herein, " * * * that the south line of Union's lease as fixed by the selection instrument should be determined in accordance with sound surveying principles, (1) by locating Section 13, Township 20 South, Range 17 East on the ground in accordance with the official survey of that township, and then by drawing a line at a sufficient distance south of the north line of Sections 13 so as to include 200 acres; and (2) by locating Section 110, Township 20 South, Range 18 East on the ground in

accordance with the official survey of that township and then by drawing a line at a sufficient distance south of the north line of Section 110 so as to include 400 acres." See plat supra, which is a copy of Defendants' Exhibit 61 and is attached to their brief in order to identify the acreage selected by Union in accordance with "sound surveying principles" and which plat is attached to the judgment of the lower court as full identification of its location of plaintiffs-appellants' land as described in the lease from La-Terre based upon Union's selection.

We see no necessity for going into detail with regard to the testimony of the surveyors on this point for they positively testified that if they were called upon to locate the property in question as described in the lease from La-Terre to Union, i. e., the North 200 acres of Section 13, Township 20 South, Range 17 East on the ground and the North 400 acres of Section 110 Township 20 South, Range 18 East, they would proceed exactly as contended by defendants-appellees. In other words, they would accept the boundaries of Sections 13 and 110 as surveyed and approved by government surveyors which would include the acceptance of the overlapping surveys of Sections 13 and 110 and would be placing the same land within the overlap in both Section 13 and Section 110. This, of course, would not settle any conflicting titles in the overlap and would not settle in any manner the conflict now before the court. We are in accord with the surveyors' method of locating the property as they are not vested with any judicial powers or authority. We are not confronted with a surveying problem but a judicial one. Nothing is accomplished which would result in an answer to the question posed in this case by accepting Section 13 and Section 110 as containing acreage common to both but treating the common acreage

as if it were only contained in one of the sections when it was surveyed and then the other when it was surveyed.

Clifford Smith, licensed Louisiana Civil Engineer who testified on behalf of Union-Gulf as an expert, was in accord with the other surveyors that if called upon to survey or locate the North 200 acres and the North 400 acres involved in this lawsuit he would have to do it by accepting the various government surveys and termed the so-called overlapping as one of surveys but not of land. His testimony clearly states the position that his deceased father, who was also a licensed Louisiana surveyor, had taken prior to his death and which he fully believed, and we quote:

> "Q. Can you actually determine on the ground what constitutes Section 13 until the court determines the correct East boundary of Section 13?
>
> A. Well, no, you can't determine the location of Section 13 without considering the overlap unless the Court determines which survey controls which would eliminate the overlap.
>
> Q. Insofar as the property out there on the ground is concerned would you say that the orange line which you marked as the North 200 acres of Section 13 is theoretical or actual?
>
> A. I would say it's theoretical. Let me borrow the map and this pencil. Suppose I was standing out on this peninsula right here.
>
> Q. Mark it for identification.
>
> A. Let's call it 6–X that I show on this map, and you ask me what section I was in. I would say that according to the Connelly survey of Township 20 South, Range 17 East I am in Section 13, and according to the

Gorlinski survey of Township 20 South, Range 18 East I am in Section 110. Really and truthfully I don't know which section I'm in. I feel and my father felt that that was not for us to decide, that the fact that the overlap existed we could show. Which survey controlled in there we don't know. We feel that's for the Courts to decide."

Again we find this witness under cross examination testifying as follows:

"Q. In the description such as the ones with which we have been dealing here, that is, the North 200 acres of a section or North 400 acres of a section, this rule relative to acreage being the weakest guide or standard would not apply, would it?

A. Well, the point that comes to my mind when they are talking about the North 200 acres or North 400 acres of a particular section is what survey of this particular section are they referring to. That's the point, the question that comes to my mind."

Again this witness gave the following testimony:

"Q. Haven't you testified that the Gorlinski location of the western boundary of Township 20 South, Range 18 East is the accepted location of that boundary?

A. No, sir. I don't think there is an accepted location of that boundary. I think that's generally what we are here in court today about."

[2] We have no hesitancy in stating that we are thoroughly in accord with the conclusion of Mr. Smith in the testimony quoted above that it is the province of the court

and not of the surveyors to decide what shall be the eastern boundary of Township 20 South, Range 17 East and the western boundary of Township 20 South, Range 18 East, which shall be a common boundary to both ranges of Township 20 involved herein.

Counsel for defendants-appellees contend that the court has no jurisdiction to recognize a common range line as a boundary between Section 13, Township 20 South, Range 17 East and Section 110, Township 20 South, Range 18 East for it would in effect be changing the surveys of the public lands as made by Foster and Walker, Connelly or Gorlinski. In their brief counsel state:

> "Under the express ruling of the United States Supreme Court in Cragin v. Powell, supra, and the numerous pronouncements of the Louisiana Supreme Court in Leader Realty Company v. Lakeview Land Company, supra, and State v. Aucoin, supra,[3] the Courts are without jurisdiction to change surveys of the public lands. The surveys therefore cannot be changed so as to conform to plaintiffs' 'interpretations'."

The above is the same thing as saying that the courts cannot pass upon conflicts in titles which arose as a result of three different government approved surveys setting three different range lines in three different locations so that the boundaries of the townships and many sections within the different range lines overlapped, and admittedly

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[3] The cases cited herein have not previously been cited in this opinion; State v. Aucoin, 206 La. 786, 20 So.2d 136; Leader Realty Company v. Lakeview Land Company, 142 La. 169, 76 So. 599; Cragin v. Powell, 128 U.S. 691, 9 S.Ct. 203, 32 L.Ed. 566.

many other conflicts besides the case under consideration. There is no question but that law as stated in Cragin v. Powell, 128 U.S. 691, 9 S.Ct. 203, 32 L.Ed. 566, is well settled that:

> "In 1848, the surveyor-general of Louisiana urgently recommended a resurvey of certain townships in the district of Louisiana, and of all lands fronting on Bayou Cailliou, in Terre Bonne, which had been surveyed by F. G. Connelly and other named surveyors. It was in accordance with this recommendation that Gorlinski made the resurveys above referred to. But the Commissioner of the general land-office very soon put an end to this system of resurveys, and in a letter to the surveyor-general, which throws no little light upon the subject, he says:
>
> "'The making of resurveys or corrective surveys of townships once proclaimed for sale is always at the hazard of interfering with private rights, and thereby introducing new complications. A resurvey, properly considered, is but a retracing, with a view to determine and establish lines and boundaries of an original survey * * * but the principle of retracing has been frequently departed from, where a resurvey (so called) has been made and new lines and boundaries have often been introduced, mischievously conflicting with the old, and thereby affecting the areas of tracts which the United States had previously sold and otherwise disposed of.'
>
> "It will be perceived that McLeran's survey not only disregards the old, original survey, making new lines and boundaries, but does so in contravention of the order from the land-office that those resurveys should not be extended into this township.

"That the power to make and correct surveys of the public lands belongs to the political department of the government, and that, whilst the lands are subject to the supervision of the general land-office, the decisions of that bureau in all such cases, like that of other special tribunals upon matters within their exclusive jurisdiction, are unassailable by the courts, except by a direct proceeding, and that the latter have no concurrent or original power to make similar corrections, if not an elementary principle of our land law, is settled by such a mass of decisions of this court that its mere statement is sufficient. Steel v. St. Louis Smelting & Ref. Co., 106 U.S. 447, 454–455, [1 S.Ct. 389] (27 L.Ed. 226, 229) and cases cited in that opinion; U. S. v. San Jacinto Tin Co., 10 Sawy. 643, [23 F. 279,] affirmed in 125 U.S. 273, [8 S.Ct. 850] (31 L.Ed. 747); U. S. v. Flint, 4 Sawy. 61, affirmed in U. S. v. Throckmorton, 98 U.S. 61 (25 L.Ed. 93); Henshaw v. Bissell, 85 U.S. 18 Wall. 255 (21 L.Ed. 835); Stanford v. Taylor, 59 U.S. 18 How. 409 (15 L.Ed. 453); Haydel v. Dufresne, 58 U.S. 17 How. 23 (15 L.Ed. 115); West v. Cochran, 58 U.S. 17 How. 403 (15 L.Ed. 110); Jackson v. Clark, 26 U.S. 1 Pet. 628 (7 L.Ed. 290); Niswanger v. Saunders, 68 U.S. 1 Wall. 424 (17 L.Ed. 599); Snyder v. Sickles, 98 U.S. 203 (25 L.Ed. 97); Frasher v. O'Connor, 115 U.S. 102 [5 S.Ct. 1141] (29 L.Ed. 311); Gazzam v. Phillips, 61 U.S. 20 How. 372 (15 L.Ed. 958); Pollard v. Dwight, 8 U.S. 4 Cranch, 421 (2 L.Ed. 666); Taylor v. Brown, 9 U.S. 5 Cranch, 234 (3 L.Ed. 88); McIver v. Walker, 13 U.S. 9 Cranch, 177 (3 L.Ed. 694); Craig v. Radford, 16 U.S. 3 Wheat. 594 (4 L.Ed. 467); and Ellicott v. Pearl, 35 U.S. 10 Pet. 412 (9 L.Ed. 475).

"The reason of this rule, as stated by Justice Catron in the case of Haydel v. Dufresne, is 'that great confusion and litigation would ensue if the judicial tribunals were permitted to interfere and overthrow the public surveys on no other ground than an opinion that they could have the work in the field better done and divisions more equitably made than the department of public lands could do.'"

However, the court recognized the limitations of the above in the next paragraph as follows:

"It is conceded that this power of supervision and correction by the commissioner of the general land-office is subject to necessary and decided limitations. Nor is it denied that, when the land department has once made and approved a governmental survey of public lands (the plats, maps, field-notes and certificates all having been filed in the proper office), and has sold or disposed of such lands, the courts have power to protect the private rights of a party who has purchased in good faith from the government against the interferences or appropriations of corrective resurveys made by that department subsequently to such disposition or sale. But there is nothing in the circumstances of this case which brings it within any such limitations."

In addition to the above settled jurisprudence we find the following quoted law and jurisprudence germane to a decision in this case. In Vol. 73 C.J.S., under the heading of Public Lands § 35, page 684, the following:

"§ 35. *Conflicting Surveys*

"*The survey last accepted by the government before parting with title is the controlling survey.*

"The survey last accepted by the government before parting with title is the controlling survey, and even though it is incorrect it will prevail over subsequent surveys. Under this rule, an accepted survey covering land in a particular township has been regarded as controlling as to lands in such township as against a subsequent conflicting survey which purports to cover land in another township. Where surveys of two grants overlap, the one first made has priority, particularly where the second is bounded with express reference to the first."

In 11 C.J.S. under the heading of Boundaries at page 728 we find the following:

"§ 118.—*Questions of Law and Fact*

What are boundaries is a question of law and where they are is a question of fact. Conflicting evidence is for the jury, or for the trial court when sitting without a jury.

What are boundaries is a matter of law for the court; where they are, a matter of fact for the determination of the jury, under proper instructions from the court, unless the facts are admitted, or not in dispute, and the only question involved is the correct application of well known principles of law to the facts, in which event the question of location of boundary is for the court."

Again in 11 C.J.S. Boundaries, page 635, § 61, under b. Resurveys we find the following statement of the law:

"*Where patent has been issued.* In ascertaining the boundaries of land on which a patent has been issued,

the date of entry determines whether the original survey or a resurvey controls.

"49. Idaho.—Wing v. Wallace, 246 P. 8, 9, 42 Idaho 430. " 'The patent when issued relates back to the date of entry, and the date of entry thus controls.'—Wing v. Wallace, supra."

In 73 C.J.S. Public Lands, page 685, we find the following:

"§ 36. *Entry in General.*

"An entry, in the technical sense, is that act by which an individual acquires an inceptive right to a portion of the unappropriated soil of the country by filing his claim. The rights of one claiming public land must be determined by the validity of the original entry at the time it was made."

Again in 73 C.J.S. under the heading of Public Lands we find the following:

"§ 33. *Corrections of Surveys and Plats; Resurveys*

"*Until some rights to a specific tract of land have been acquired under a survey, a corrected survey or resurvey can be made and substituted therefor.*

"Until some rights to a specific tract of land have been acquired under a survey, a corrected survey or resurvey can be made and substituted therefor, and the government may make as many surveys as may be desired. Rights which have been acquired under a government survey cannot be affected or interfered with by a subsequent survey or by a subsequent correction of a plat. After the government conveys lands it has

no jurisdiction to intermeddle with them in the form of a second survey, and, accordingly, a resurvey by the government after the issuance of a patent does not affect the rights of a patentee."

[3] It is well settled law and counsel for plaintiffs and defendants agree that an approved survey of public lands does not merely ascertain boundaries, it *creates* them. A township survey completed and approved *creates* the boundaries of the township and the sections therein. Cox v. Hart, 260 U.S. 427, 43 S.Ct. 154, 67 L.Ed. 332 (1922); Sawyer v. Gray, 205 F. 160 (D.C.1913), affirmed 213 F. 1022 (9th Cir. 1914); rev'd on other grounds 237 U.S. 674, 35 S.Ct. 842, 59 L.Ed. 1170 (1915); Robinson v. Forrest, 29 Cal. 317.

Union has a lease covering certain lands in Sections 13 and 110 and Placid has a lease covering lands in Sections 13 and 110 but completely dependent upon the south boundary of Union's lease. A decision must be reached which fixes the location of the east boundary, or range line, of Township 20 South, Range 17 East and of Township 20 South, Range 18 East, this range line to be the common boundary between these two ranges in Township 20. It is only then that the land leased to Union can be definitely located, thus establishing its south boundary which in turn will identify and locate on the ground the lands leased to Placid. We now proceed to the facts that we believe necessary to accomplish such a result.

In 1831 Foster and Walker made a survey under contract with the government of Township 20 South, Range 18 East and placed the range line as shown on plat A, which range line varied four degrees rather than being run north and south. This survey by Foster and Walker was ap-

proved in 1832. Under the agreed law, some of which is cited, supra, when the Foster and Walker survey was approved it *created* Township 20 South, Range 18 East and fixed the western boundary of the township which became the established range line which could only be changed under certain conditions such as a resurvey prior to the acquisition of rights by third parties in and to Township 20 South, Range 18 East as established by the Foster and Walker survey. It is admitted that land was acquired by patent by third parties from the government under the Foster and Walker survey of Township 20 South, Range 18 East. As a matter of fact, introduced into this record as P–38, Volume 4, is a report of survey of La-Terre Company, Inc. boundaries in T 19 S, R 17 E, T 20 S, R 17 E and T 20 S, R 18 E, Terrebonne Parish, Louisiana. In other words, it is a report of a survey made on behalf of La-Terre setting its boundaries in Township 19 South, Range 17 East, Township 20 South, Range 17 East and Township 20 South, Range 18 East. We find a paragraph on page 2 of the report as follows:

> "La-Terre's title in T 20 S, R 18 E are based on the Gorlinski survey. In this area only Lot No. 1 of Section 112 was patented under the Foster & Walker survey, La-Terre having a common boundary with the North line of said Lot No. 1. There is every indication that the said north line of Lot No. 1 would be the same for either survey."

Again on page 3 of this report we find the following:

> "Title to some of the Western portion of Lots 1 & 2, Section 112, T 20 S, R 18 E are still in the sovereign, the Eastern portions of these lots having been patented by the United States as Lot 1 of said section

under the Foster & Walker survey. Parts of the SE¼ of Section 13 and the NE¼ of Section 24, T 20 S, R 17 E owned by La-Terre overlap said Western portion of Lots 1 and 2."

Connelly received a contract in October, 1837, from the Surveyor-General to survey all townships south of Township 18 and between Ranges 16 and 28 East *which had not theretofore been surveyed.* Thus, Township 20 South, Range 18 East, previously surveyed in 1831 by Foster and Walker, was specifically excluded from the contract and Connelly had no authority to re-establish the west boundary or range line of Township 20 South, Range 18 East which in effect precluded the establishment of any other range line. The Foster and Walker range line is the east boundary of Township 20 South, Range 17 East. Exhibit A–5 is a plat of Township 20 South, Range 17 East and we find thereon the following:

"The East Boundary was Surveyed by A. H. Foster and I. N. Walker Deputy Surveyor's in the Winter of 1831.

"The North Boundary was surveyed by John Maxwell Deputy Surveyor in the Winter of 1831.

"The South and West Boundaries, Section Lines and Traverse were Surveyed by G. F. Connelly Deputy Surveyor in the 4th quarter of 1837 under Contract of 13th of October 1837 and paid for in the first quarter of 1838. Amounting to 92 miles 68 chains and 15 Links."

Additionally we find in the record a written statement which is the result of an examination of all official documents connected with, and survey of, Township 20, Ranges

17 and 18 East, Southeastern Land District of Louisiana, West of the Mississippi River, made by C. E. Bridges, duly qualified and sworn as Civil Engineer and Land Surveyor, acting under instructions from Mr. Arthur A. Lancaster of Placid Oil Company. We find the following written statement by this Engineer:

> "From these official documents it was found that John Maxwell originally surveyed all of Township 19 South, Range 17 E in the winter of 1830 and 1831, as represented by his approved plat dated June 4, 1832. All of Township 20 South, Range 18 East was originally surveyed by A. H. Foster and I. N. Walker in the winter of 1831, as represented by their approved plat dated April 5, 1832. All of Township 20 South, Range 17 East was originally surveyed by G. F. Connelly in the 4th quarter of 1837 under contract of October 13, 1837, as represented by his plat approved May 19, 1842, with the exception of the north boundary which was previously surveyed by John Maxwell in the winter of 1830 and 1831, and *the east boundary which was previously surveyed by A. H. Foster and I. N. Walker in the winter of 1831.*" (Emphasis supplied.)

Connelly's field notes state that he did not find the southeast corner which had "heretofore been set". He was clearly referring to the southeast corner of the township which had been previously set by Foster and Walker and which he was under a duty to locate and accept as the eastern boundary of Township 20 South, Range 17 East. We are therefore of the opinion that Connelly's purported establishment of the east boundary of Township 20 South, Range 17 East farther east than the western boundary of Township 20 South, Range 18 East by Foster and Walker

in 1831 was unauthorized and legally without any effect as Township 20 South, Range 18 East had been *created* by the Foster and Walker survey in 1831, approved 1832, and the western boundary became the common range line between Ranges 17 and 18 of Township 20.

We are in complete accord with the facts and conclusions stated with regard to the surveys, particularly of Connelly and of Foster and Walker in plaintiffs' brief as follows:

"(i) Connelly clearly was in error on doing what he did (Ex. P–3; Ex. P–3a; Tr., pp. 15–32; 250, 260–263). Connelly primarily erred when he ignored the west boundary of Township 20 South, Range 18 East (and the sections in the western tier), a surveyed monument (Tr. p. 263), and gave effect to his calls for course and distance.

(ii) Connelly had no contract from anyone to survey any land in Township 20 South, Range 18 East. His contract, dated October 13, 1837 (Ex. D–83), with the Surveyor General was limited to surveying all townships south of Township 18 and between Ranges 16 and 28 East *which had not theretofore been surveyed* (Tr. pp. 172, 181, 183, 202), which, of course specifically excluded Township 20 South, Range 18 East, previously surveyed in 1831 by Foster and Walker. From these facts, it reasonably can be assumed that Connelly intended to locate and tie to the west boundary of Township 20 South, Range 18 East (and the sections in the western tier), and that he did not intend to extend his course and distance calls past that boundary. To assume otherwise would be to assume that that part of his survey was an unauthorized and illegal survey in violation of his contract.

(iii) If the Surveyor General had known that Connelly had not located and tied to the west boundary of Township 20 South, Range 18 East (and the sections in the western tier), and had extended his course and distance calls past that boundary and over into that township, the Surveyor General would not have paid Connelly for that part of his survey which was in error (Tr. pp. 33, 261) or approved the plat of Township 20 South, Range 17 East (Tr. pp. 203, 261). From these facts, there can be no doubt about the intent of the Surveyor General in approving Connelly's survey and the plat thereof.

(iv) Connelly did not survey, run or mark the East boundary of Township 20 South, Range 17 East. It is apparent from an examination of Connelly's field notes that the only land which Connelly surveyed, ran or marked in Township 20 South, Range 17 East, was the west and south boundaries and the subdivisions of that township (Ex. A-4, Stip.; Ex. P-3; Ex. P-3a; Tr. pp. 15-33, 260). As a matter of fact, Connelly did not even survey, run or mark on the ground the north and south boundaries of all of the eastern tier of sections (1, 12, 13, 24, 25 and 36) for the full called distance of eighty chains, but merely projected some of them on paper for that distance (Tr. pp. 25, 234). It also is apparent from an examination of the plat of Township 20 South, Range 17 East, that Connelly did not survey, run or mark the east boundary of that township (Ex. A-5, Stip.). That plat, by making reference thereon to the fact that Foster and Walker surveyed the

east boundary in 1831, obviously adopts the west boundary of Township 20 South, Range 18 East, as surveyed in 1831 by Foster and Walker, as the east boundary of Township 20 South, Range 17 East. Moreover, the plat excludes any possible argument that Connelly or anyone else except Foster and Walker surveyed the east boundary of Township 20 South, Range 17 East, by not only making reference thereon to the fact that Foster and Walker surveyed the east boundary thereof in 1831, but also by making reference thereon to the fact that only 'The South and West Boundaries, Section Lines and Traverse were Surveyed by G. F. Connelly Deputy Surveyor in the 4th quarter of 1837 under Contract of 13th of October 1837 and paid for in the 1st quarter of 1838. Amounting to 92 miles 68 chains and 15 links.' These recitations on the plat, of course, could only have been based on the field notes and sketch plat prepared and submitted to the Surveyor General by Connelly (Tr. p. 248). Another reason why it is definite that Connelly did not survey the east boundary of Township 20 South, Range 17 East, is because he was not paid to survey it (Tr. pp. 33, 261). It only can be assumed from the foregoing facts that Connelly, in making his survey, and surety the Surveyor General, in approving his survey and the plat of Township 20 South, Range 17 East, intended to locate and tie to the west boundary of Township 20 South, Range 18 East (and the sections in the western tier), and did not intend to extend his course and distance calls past that boundary.

(v) In surveying the west and south boundaries of Township 20 South, Range 17 East, and the subdivisions of that township, Connelly no doubt was familiar with the rectangular survey system employed by the federal government, the intent of which was that each township would join the other by a common boundary (Tr. pp. 182, 206, 224) and knew that Foster and Walker had previously surveyed the west boundary of the adjoining township and that he was supposed to close his survey against it (Tr. p. 260). This also is indicated by the fact that Connelly mentioned in his field notes that he was unable to find at the southeast corner of Township 20 South, Range 17 East, the corner heretofore set, which obviously was the southwest corner of Township 20 South, Range 18 East, heretofore set by Foster and Walker (Tr. pp. 180, 182, 204, 234). Here, again, it becomes apparent that Connelly, in making his survey and the plat of Township 20 South, Range 17 East, must have intended to locate and tie to the west boundary of Township 20 South, Range 18 East (and the sections in the western tier), and must not have intended to extend his course and distance calls past that boundary."

Under the Swamp Land Act of 1849, the State of Louisiana on August 9, 1850, made a swamp selection list covering Section 13, Township 20 South, Range 17 East Louisiana Meridian as per certificate of Mrs. Ellen Bryan Moore, Register of State Land Office (Exhibit A). On this list that portion of Section 13 selected contained 560 acres, which did not include the S½ of SW¼. Approval to Louisiana as

per its swamp selection was made for the land stated in Section 13, Township 20 South, Range 17 East on May 6, 1852. At this time the Foster and Walker survey controlled the eastern boundary of Township 20 South, Range 17 East and the line between the two became the common range line as of the date it was approved in 1832. Therefore, Section 13 at the time the State attained it was bounded on the east by the Foster and Walker range line and not the erroneous and illegal Connelly line.

[4] Unless the resurvey by Gorlinski of the Foster and Walker survey of Township 20 South, Range 18 East, made by the former in 1855 and approved in 1856, affected or changed the Foster and Walker line legally, the latter would still be the controlling survey and the range line established by Foster and Walker in 1831 as the western boundary line of Township 20 South, Range 18 East and the eastern boundary of Township 20 South, Range 17 East. We do not believe as a matter of law that the Gorlinski resurvey could affect the range line as established by Foster and Walker as the State of Louisiana had previously selected and been granted 560 acres of Section 13, Township 20 South, Range 17 East, which was bounded at that time on the east by the west boundary of Section 110, as surveyed by Foster and Walker. The Gorlinski survey could have no effect farther west than the Foster and Walker survey of 1831 and the State could acquire only that part of the land in Section 13 bounded to the east by the Foster and Walker range line. Additionally, other lands not described were admittedly disposed or patented under the Foster and Walker survey of Township 20 South, Range 18 East.

We are therefore of the opinion that the controlling range line between Township 20 South, Range 17 East and Township 20 South, Range 18 East is the one established by Foster and Walker in 1831 and approved in 1832 insofar as the common range line between Section 13 of Township 20 South, Range 17 East and Section 110 of Township 20 South, Range 18 East is concerned.

It is ordered, adjudged and decreed that the judgment of the lower court is hereby annulled, reversed and set aside and that the North 400 acres of Section 110, Township 20 South, Range 18 East, Terrebonne Parish, covered and embraced by the lease from La-Terre Co., Inc. to Union Producing Company, be located on the ground in accordance with the boundaries of said Section 110 surveyed, run and marked in or about 1831 by A. H. Foster and I. N. Walker, as shown on Plat "C" attached hereto and made part hereof, by commencing at a point on the West boundary of said Section 110 as established by said Foster and Walker and running a line Easterly to the Eastern boundary of said Section 110 parallel to the Northern boundary thereof a sufficient distance South of said Northern boundary to contain 400 acres.

MAP SHOWING
SECTION 109, 108, 110, 111, 12 & 13 IN T20S-
R18E & 17E FOR UNION PRODUCING CO.

SCALE OF FEET
1000 500 0 1000 2000 3000 4000 5000

OFFICE OF T. BAKER SMITH & SON CIVIL ENGINEERS
NOVEMBER 28, 1951 HOUMA, LOUISIANA

APPROVED: T. Baker Smith CIVIL ENGINEER
Registered in accordance with La. Law 51

T. BAKER SMITH
REG. No. 51
REGISTERED
PROFESSIONAL ENGINEER
IN
CIVIL ENGINEERING

PLAT "C"

It is further ordered, adjudged and decreed that the North 200 acres of Section 13, Township 20 South, Range 17 East, Terrebonne Parish, covered and embraced by the lease from La-Terre Co., Inc. to Union Producing Company, be located on the ground in accordance with the boundaries of said Section 13, surveyed, run and marked in or about 1831 by A. H. Foster and I. N. Walker, as shown on Plat "C" attached hereto and made part hereof, by a line commencing at a point on the West boundary of Range 18 East as established by said Foster and Walker and running Westerly and parallel to the Northern boundary of said Section 13 to the East boundary of the West ½ of the SW¼ of Section 13, a sufficient distance South of said Northern boundary to contain 200 acres.

It is further ordered, adjudged and decreed that Union Producing Company and Texas Gulf Producing Company be and they are hereby recognized as owners, in equal undivided proportions, of the gas and condensate well located in the N½ of Section 13, Township 20 South, Range 17 East and marked on Plat A as No. B-2 well and which was completed in October 1960 and has since been operated as a producing gas and condensate well and which under Order No. 416-A-4 of the Department of Conservation of the State of Louisiana, effective October 1, 1960, became and is the Duvall Sand Well for Duvall Unit No. 12, a 265 acre producing unit created by said order, with Placid Oil Company as the operator thereof.

It is further ordered that Placid Oil Company account and remit to Union Producing Company and Texas Gulf Producing Company, plaintiffs-appellants herein for the oil, gas and other minerals produced from the gas and condensate well hereinabove described as well B-2 and all

royalties paid La-Terre Co., Inc., in excess of those stipulated in the lease from La-Terre Co., Inc., to Union Producing Company, as a result of such production, together with interest thereon at the rate of five (5%) per cent per annum from date such amounts were due, until paid, from which aggregate shall be deducted the cost incurred by Placid in drilling, completing and operating said well for the production of oil, gas and other minerals therefrom, saving and reserving to Placid its rights, if any, to recover from La-Terre Co., Inc., all royalties paid in excess of those stipulated in the lease from La-Terre Co., Inc., to Union Producing Company.

It is further ordered, adjudged and decreed that the defendants-appellees pay all costs of this appeal.

Reversed and rendered.

Opinion of the Supreme Court of Louisiana

248 La. 447

SUPREME COURT OF LOUISIANA

No. 47968

UNION PRODUCING COMPANY *et al.*

v.

PLACID OIL COMPANY *et al.*

Nov. 12, 1965

In re: La-Terre Co., Inc., and Placid Oil Company applying for certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of Terrebonne. 178 So.2d 392.

The application is denied:—According to the facts of the case, as found to be by the Court of Appeal, the result reached by the Court is correct.

SANDERS and SUMMERS, *JJ.*, are of the opinion that the writ should be granted.

Order Extending Time to File Petition for Writ of Certiorari

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1965

PLACID OIL COMPANY and LA-TERRE COMPANY, INC.,

Petitioners,

vs.

UNION PRODUCING COMPANY and TEXAS GULF PRODUCING COMPANY.

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 14, 1966.

/s/ WILLIAM O. DOUGLAS
Associate Justice of the Supreme Court of the United States

Dated this 3rd day of February, 1966

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1113~~ 85

PLACID OIL COMPANY and LA-TERRE CO., INC.,
Petitioners,

v.

UNION PRODUCING COMPANY and TEXAS GULF PRODUCING COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Louisiana and/or to the Court of Appeal, First Circuit, State of Louisiana

JOINT BRIEF OF RESPONDENTS IN OPPOSITION

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LECOMTE, SHREVEPORT, LOUISIANA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1113

PLACID OIL COMPANY and LA-TERRE CO., INC.,
Petitioners,

v.

UNION PRODUCING COMPANY and TEXAS GULF PRODUCING COMPANY,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Louisiana and/or to the Court of Appeal, First Circuit, State of Louisiana

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JOINT BRIEF OF RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinions below are referred to in the Petition.

JURISDICTION

Petitioners seek to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(3). However, this Court lacks jurisdiction because the case does not involve a substantial federal question and the judgment sought to be reviewed is based on an adequate and independent non-federal ground; and, in any event, a federal question was not raised and preserved in the Courts below.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

Petitioners' statement of the question presented is incorrect and would attempt to inject a federal question. The Court of Appeal, in the construction of an oil and gas lease description calling for the North 200 acres of Section 13, Township 20 South, Range 17 East, and North 400 acres of Section 110, Township 20 South, Range 18 East, found that the parties to the lease intended that 600 acres of land in the two sections would be covered by the lease and intended that the boundary between the two sections would be the range line established in 1831 by Foster and Walker and approved in 1832 by the Surveyor General. Thus, judgment ordering the land to be so located on the ground was rendered. The questions presented are:

(1) Whether the state court's factual determinations involved a substantial federal question;

(2) Whether the state court judgment was based on an adequate and independent non-federal ground; and

(3) Whether petitioners raised and preserved in the state courts the federal question which they contend is presented, if the federal claim and the grounds therefor were not pleaded as a special or affirmative defense, as required by state law, but to which only vague reference was made in oral argument before the District Court, in a brief on appeal and in an application to the highest state court for certiorari, or writ of review, which application was denied without opinion.

STATUTE PRESENTED

It is submitted that none of the seven statutes printed in Appendix A of the Petition is involved.

COUNTERSTATEMENT OF THE CASE

Petitioners' statement of the case is incorrect and would attempt to inject a federal question. On June 21, 1948, La-Terre[1] as lessor, granted to Union, [2] as lessee, an oil and gas lease covering 18,056 acres of land in Lafourche and Terrebonne Parishes, Louisiana (C-6, Stip.). Included among the lands situated in Terrebonne Parish, Louisiana, was land described in the lease as:

> All of Section 13 (except W½ of SW¼), containing 560 acres, Township 20 South, Range 17 East, and all of Section 110, containing 612.84 acres, Township 20 South, Range 18 East.

In accordance with the provisions of the lease, Union, by instrument dated August 24, 1949, selected for lease continuation 4,456.84 acres of the land described in the lease, for which it paid to La-Terre $10.00 per acre, or $44,568.40, as required under the lease. (Tr. 69; C-8, Stip.) Included in this selected acreage was land described in the instrument as:

> North 200 acres of Section 13, containing 200 acres, Township 20 South, Range 17 East, and North 400

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(1) La-Terre Co., Inc., one of the defendants in the state court, is herein referred to as "La-Terre."

(2) Union Producing Company, one of the plaintiffs in the state court, is herein referred to as "Union."

acres of Section 110, containing 400 acres, Township 20 South, Range 18 East.

Texas Gulf[3] acquired from Union one-half of its lease in 1950 (C-9, Stip.), and, commencing in June, 1951, they drilled and completed as commercial producers five gas and condensate wells on land under their lease, for which La-Terre received royalty.

Just prior to March of 1960, Union and Texas Gulf had made a survey on the ground of Sections 13 and 110 and for the first time learned for a fact that the governmental survey of Section 13 and two governmental surveys of Section 110 did not conform and harmonize but actually overlapped each other for a distance of approximately 3,000 feet. (P-3, P-3a, P-4; Tr. 71, 82 108, 109)

The overlap was brought about by different locations of the range line between Ranges 18 and 17 East pursuant to a survey of Township 20 South, Range 18 East, by Foster and Walker, Surveyors, made in 1831, and approved in 1832 by the Surveyor General; a resurvey or recheck of the Foster and Walker survey by Gorlinski, Surveyor, made in 1855 and approved in 1856 (wherein he moved the west boundary or range line of Township 20 South, Range 18 East, as established by Foster and Walker); and a partial survey of Township 20 South, Range 17 East, by Connelly, Surveyor, made in 1837 and approved in 1842 (wherein he placed the east

(3) Texas Gulf Producing Company, the other plaintiff in the state court, is herein referred to as "Texas Gulf."

boundary or range line of Township 20 South, Range 17 East, some 3000 feet farther to the east than the Gorlinski and Foster and Walker surveys, measured from the location of the range line at the Northwest corner of Township 20 South, Range 18 East), notwithstanding the then existing 1831 survey by Foster and Walker.[4] (A-1, A-2, A-4, A-5, A-8, A-9, Stip.; P-2, P-3a, P-4; Tr. 15-32, 200, 206, 207, 214, 246, 249-257 and 260-263.)

The plat reproduced in the Opinion of the Court below (178 So.2d at p. 394),[5] clearly shows the location of the three range lines. The four charts attached to the Petition also illustrate the location of the three range lines, although Chart 4 is misleading, as the range line shown and referred to thereon by petitioners as "'Corrected' Common Boundary of Federal Townships, Drawn by Louisiana Court of Appeal," is, in fact, the range line established in 1831 by Foster and Walker and approved in 1832 by the Surveyor General. It is also the range line which, the Court of Appeal found, the parties to the lease intended as the boundary between Sections 13 and 110.

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(4) The location of the Northwest Corner of Township 20 South, Range 18 East, was identical in the Foster and Walker survey and the resurvey by Gorlinski. From this point, however, the Foster and Walker survey veered south four degrees while the Gorlinski resurvey was run due south from the Northwest Corner and resulted in a distance between the location of the Southeast Corner according to the Foster and Walker survey and the resurvey by Gorlinski of Township 20 South, Range 18 East, of approximately 27 chains.

(5) Appendix B of the Petition, p. 21b.

Prior to the final completion of an oil and gas lease which La-Terre granted to Placid[6] in March of 1960, La-Terre, being fully aware of the overlap and not knowing exactly where the southern boundary of the lease owned by Union and Texas Gulf might be placed, considered the matter thoroughly before deciding upon the description to be placed in Placid's lease. (P-11-P-38).

Accordingly, on March 30, 1960, La-Terre granted to Placid the oil and gas lease covering, among other lands, all of the property in Sections 13 (except W½ of SW¼) and 110, except the property in those two sections covered and affected by the Union-Texas Gulf lease.

The description in the Placid lease thus makes the location of the North boundary of Placid's lease completely dependent on the location of the South boundary of the North 200 acres of Section 13 and the North 400 acres of Section 110, as described in the Union-Texas Gulf lease.

Union and Texas Gulf informed Placid and put it on notice, shortly after Placid took out a permit to drill its first well, that they would assert all of their legal rights in the event that it was determined that a well was drilled by Placid on land covered by the Union-Texas Gulf lease. (P-44; Tr. 149, 150).

This declaratory judgment action was brought by respondents to have the Court determine the location on the ground of the 600 acres in Sections 13 and 110 which they contended was covered by their lease, after it became

(6) Placid Oil Company, the other defendant in the state court, is herein referred to as "Placid."

apparent that the parties could not agree on the ground location. La-Terre took the side of Placid, as it was entitled to a larger royalty under the Placid lease. (5(B), Stip.)

The District Court interpreted the descriptions of the land in the two sections covered by the Union-Texas Gulf lease according to the construction placed on the description by La-Terre and Placid.

The Court of Appeal reversed the District Court's judgment and, in its construction of the description in the lease contract, found that the parties to the lease contract intended that 600 acres of land in the two sections would be covered by the lease; and intended that the boundary between the two sections would be the 1831 Foster and Walker range line. In other words, the Court found from all the evidence that La-Terre did not intend to sell, and Union and Texas Gulf did not intend to buy, an "overlap" or the same land twice..

The finding of fact that 600 acres in the two sections were covered by the lease was based on the Court's determination that the selection instrument description, North 200 acres of Section 13 and North 400 acres of Section 110, was a "definite" description, that "The acreage cannot be ignored," and that the description "is perfectly understandable, nothing ambiguous per se, it is couched in simple language and is not a weak description but a strong one and there would be no problem whatsoever for a surveyor to locate the land therein described on the ground if Section 13, Township 20 South, Range

17 East and Section 110, Township 20 South, Range 18 East had no overlap lines, but one range line which served as a common boundary between them," (178 So.2d at pp. 401, 402).[7] The Court considered, but rejected, petitioners' factual contention that Union, at the date of the selection, had knowledge of the overlap "and therefore they knew or are charged wth knowledge that the land described in Sections 13 and 110 did not contain 600 acres and they did not intend to select 600 acres." (178 So.2d at p. 399)[8]

Because it "would not settle in any manner the conflict now before the court," the Court also disregarded surveyors' testimony that "they would accept the boundaries of Sections 13 and 110 as surveyed and approved by government surveyors which would include the acceptance of the overlapping surveys of Sections 13 and 110 and would be placing the same land within the overlap in both Section 13 and Section 110." (178 So.2d at p. 402)[9]

Then the Court soundly deduced from the evidence that a boundary between Sections 13 and 110 had to be located on the ground before the 600 acres (and, for that matter, the boundary, between the Union-Texas Gulf lease and the Placid lease) could be so located, as follows:

> ". . . Nothing is accomplished which would result in an answer to the question posed in this case by ac-

(7) Appendix B of the Petition, pp. 35b, 36b.

(8) Appendix B of the Petition, p. 29b.

(9) Appendix B of the Petition, p. 37b.

cepting Section 13 and Section 110 as containing acreage common to both but treating the common acreage as if it were only contained in one of the sections when it was surveyed and then the other when it was surveyed." (178 So.2d at p. 403) (10)

* * *

". . . A decision must be reached which fixes the location of the east boundary, or range line, of Township 20 South, Range 17 East and of Township 20 South, Range 18 East, this range line to be the common boundary between these two ranges in Township 20. It is only then that the land leased to Union can be definitely located, thus establishing the south boundary which in turn will identify and locate on the ground the lands leased to Placid." (178 So.2d at pp. 406, 407) (11)

Buttressing the Court's decision on this point was the testimony of a licensed Louisiana Civil Engineer, to the effect that *no one* can locate the land described in the lease until the Court determined the boundary separating the two sections (178 So.2d at p. 403). (12)

The Court's finding, that the parties to the contract intended that the boundary between the two sections would be the Foster and Walker range line, was based on its presumption that the parties intended to locate on the ground a boundary between the two sections which would yield 600 acres in the two sections and which boundary the Court was of the opinion would be control-

(10) Appendix B of the Petition, pp. 37b, 38b.

(11) Appendix B of the Petition, p. 46b.

(12) Appendix B of the Petition, pp. 38b, 39b.

ling in the absence of such an agreement. From this, the Court found that the Foster and Walker range line, being the one first established and approved, would accomplish both purposes.

The Court of Appeal did not order any resurvey or revise or remake any U. S. Survey, but, as between conflicting surveys, simply determined the U. S. Survey which was applicable to the title dispute.

Therefore, the Court of Appeal ordered that the 600 acres be located on the ground in accordance with the plat reproduced in its opinion (178 So.2d at p. 411).[13] As incidental relief, it further ordered that Union and Texas Gulf be recognized as owners of a well drilled on this 600 acres and that Placid account and remit to the owners for all oil, gas and other minerals produced therefrom.

After an application for rehearing was denied by the Court of Appeal, the Louisiana Supreme Court denied an application by La-Terre and Placid for certiorari, or writ of review, with the following statement:

> "According to the facts of the case, as found to be by the Court of Appeal, the result reached by the Court is correct." (248 La. 447, 179 So.2d 432).[14]

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(13) Appendix B of the Petition, p. 56b.

(14) Appendix B of the Petition, p. 59b.

ARGUMENT

I

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW INVOLVED.

The narrow questions of fact presented here are of small consequence to all except the parties to this litigation, even though petitioners would attempt to convince this Court that such questions have broad implications and justify review.

In determining what the Court below actually did, petitioners did not consider the questions presented by the pleadings which were necessary to the Court's decision or the judgment which it rendered. To do so would have clearly shown the lack of a federal question, as well as the existence of an adequate and independent state ground.

Instead, petitioners erroneously told this Court that respondents "petitioned the Louisiana Court to upset the Federal boundaries of the sections selected under the 1948 lease and draw new boundaries." (Petition, p. 8) This is simply not correct. Respondents merely asked for a declaration that "600 acres of land" in the two sections were "covered and affected by the oil, gas and mineral lease" and that the 600 acres "be located on the ground." Nowhere have respondents "petitioned to upset boundaries or draw new boundaries," and a conclusion to the contrary is ill-founded.

Petitioners erroneously charge the Court of Appeal with rendering a judgment which "upset the Federal

boundaries of both townships" and which " 'ordered, adjudged and decreed' a new boundary line in accordance with what it conceived to be the Old Foster and Walker survey—and held that Union and Texas Gulf had the right to the oil royalties from Placid's well B-1." Further, they charge that the purpose and effect of the judgment was to "establish 'the legal bounds of the two sections involved.' " (Petition, pp. 9, 10). The unambiguous judgment can not be so interpreted. The Court held that Union and Texas Gulf had a right to all *oil, gas, and other minerals* (and not just *oil royalties* produced from the *B-2* and not the *B-1) well.* The judgment also decreed that the land in the two sections described in and covered by the lease "be located on the ground" in accordance with a certain plat so as to contain 600 acres (178 So.2d at pp. 410-412).(15) Such distortions of the judgment by petitioners cannot be relied upon to throw on this Court a so-called federal question. Petitioners would have this Court ignore the *judgment* of the Court below, but this Court's "power is to correct wrong judgments, not to revise opinions." *Herb v. Pitcairn,* 324 U.S. 117, 125-6 (1944).

In an apparent attempt to impress this Court with the importance of this case as affecting matters beyond those here involved, petitioners went far beyond the record in stating that Placid "brought in three valuable wells, including well B-1, at a depth of over 15,000 feet, and at a total cost of over $1,000,000" (Petition, p. 8); and that "we have also examined the private Tobin survey

(15) Appendix B of the Petition, pp. 55b-58b.

services used by the oil and gas industry throughout southern Louisiana and have identified almost three dozen areas of overlaps or other incongruities in the Gulf Coast area alone which could from all appearances generate private litigation to 'correct' old Federal boundaries." (Petition, pp. 14, 15). Such factors, even if supported by evidence, are not sufficient by themselves to justify review by this Court.

Petitioners also read into *Cragin v. Powell*, 128 U.S. 691 (1888), certain determinations which were not made in that case and suggest that it decided a federal question and "upheld" the same approved survey which, petitioners charge, the Court of Appeal held " 'was unauthorized and legally without any effect . . .' and 'erroneous and illegal.' " (Petition, pp. 6, 7, 9, 11-13). In the first place, in that case, a "Louisiana State Court" never attempted to "upset the official Connelly survey" and "redraw the boundaries of 17 to conform with the adjacent Gorlinski boundary of 18," nor did such a court appoint "a court surveyor for the purpose." (Petition, pp. 6, 7). The case, although originally brought in a Louisiana State Court, was removed to and kept by a federal district court on grounds of diversity of citizenship, and this Court had it on appeal from a decision of that Court. A surveyor appointed by the Court proceeded to run a line which he considered the proper boundary between the lands in dispute and recommended its adoption to the Court "as substantially such a line as would have been run had the whole township been resurveyed at the time when Deputy-Surveyor Gorlinski was resurveying the adjoining town-

ships." This case was placed on the equity side of the docket, because this boundary would have the effect of ejecting Cragin from "the rich ridges along the bayous now in the possession of the latter." This Court stated that this brought within the Court's "equitable cognizance the essential rights of the parties, unaffected by the special limitations governing the action of boundary," and the case was tried in equity. The district court adopted the boundary so run and Cragin appealed to this Court. This Court reversed and simply held that Powell either did not intend to get Cragin's land or he was to be considered as a man watching for the accidental mistakes of others and preparing to take advantage of them, saying, "An advantage thus obtained, a court of equity will not readily enforce." Therefore, language in the case to the effect that generally the land office, and not the court, should supervise and carry out governmental surveys is obiter dictum. Even if this general statement of the law applied to this case, which is denied, this Court was careful to point out that it was "subject to necessary and decided limitations" and proceeded to discuss such limitations. Therefore, contrary to petitioners' assertions, this Court did not approve the Gorlinski survey in *Cragin v. Powell.*

As the judgment of the Court below was based upon an analysis of the particular findings of fact involved, and upon the construction of the particular contracts involved solely between private parties to the contract, this Court should not exert its jurisdiction merely to review the decision. "We do not grant a certiorari to

review evidence and discuss specific facts." *United States v. Johnston*, 268 U.S. 220, 227 (1924). See also: *Black v. Cutter Laboratories*, 351 U.S. 292, 299 (1956).

La-Terre and Placid refer to seven statutes printed in Appendix A of the Petition as being involved, but they fail to show how the statutes are ever drawn into question in the case. Even so, it is not enough to show that petitioners' claim is dependent on an act of Congress or that the claim has its origin in a patent of the United States or that the land was described by governmental subdivisions. Petitioners must prove to this Court's satisfaction that "the suit is one which really and substantially involves a dispute or controversy as to a right which depends upon the construction or effect of the Constitution, or some law or treaty of the United States; that the suit, in whole or in part, arose out of such controversy, or that a decision of the case depended upon such construction." *Huckins v. Duval County, Florida*, 286 F. 2d 46 (5th Cir. 1960), cert den. 366 U.S. 945; *Kirklin v. Ellerbe*, 278 F. 168 (5th Cir. 1922). No such proof has even been offered.

This Court denied certiorari in *Huckins v. Duval County, Florida*, supra. There, the Court held that there existed no federal question, although, conceding that the answer to the question concerning one of conflicting claims which resulted from two overlapping governmental surveys as to the boundaries of land embraced within a Spanish grant may involve "a construction of the grant, a determination of the consequences of the proceedings held and the action taken by the Commissioners, a decision

as to the validity of the patent to the State of Florida, or *an ascertaining of the effect of the Government surveys.*" *Huckins v. Duval County, Florida*, 286 F.2d 46, at p. 49 (Emphasis added). Thus, even if there were other questions besides interpretation of the Union-Texas Gulf lease in this case, the *Huckins* case would still be conclusive that no federal question is presented in this case.

This Court also refused a writ in *Lanfear v. Hunley*, 71 U.S. 325 (1866), to review a Louisiana Supreme Court judgment determining the location of the eastern boundary of a Spanish grant as surveyed by a U. S. Deputy Surveyor in 1854, which overlapped land occupied and claimed by defendant by right of preemption. The Court said the controversy turned wholly upon the question of locality of the boundary, and, going on, made the following statement:

> ". . . This court has repeatedly held, that it does not warrant the review of an adjudication upon a mere question of boundary. The fact that the land to which the boundary relates is held by a title derived from an act of Congress does not change the result. If the title be admitted as recognized by the act, its location upon the land is a subject wholly within the cognizance of the state tribunals, and it is not within the power of this court to revise their action." *Lanfear v. Hunley*, 71 U.S. 325, at p. 326.

The *Lanfear* case is similar in many respects to this case and establishes the lack of a federal question here. See also *Almonester v. Kenton*, 50 U.S. 1 (1850).

The case of *Graham v. Gill*, 223 U.S. 648 (1911), cited by petitioners, involved the requirements of a federal statute "as to the mode of surveying public lands" and, therefore, has no application here. As the Court of Appeal said in this case below, "We are not confronted with a surveying problem, but a judicial one." 178 So.2d at pp. 402, 403. No question was presented in this case in any of the courts below concerning the identification of the precise location of the three range lines. All parties agreed as to the location of the three range lines located according to the plat and field notes of the surveyors involved. On the other hand, in the *Gill* case, the question presented involved the interpretation of field notes of government surveyors and other evidence in order to identify the precise location of the tract in dispute according to the surveys. That was the sole question presented. In the *Gill* case, the government sold plaintiffs an island (lot 1, section 8), which was surveyed by continuing a survey made from land lying east thereof, and sold defendant an island (lot 2, section 17), which was surveyed by continuing a survey made from lands lying west of the island. By using the field notes of the respective surveys, it appeared that the island in defendant's possession was the one sold to plaintiff. Defendant sought to introduce at the trial evidence of the *physical location* of his tract with reference to other land in the vicinity, shown on the plat of survey. Plaintiffs objected to the admission of all evidence bearing upon the *location* of the tract other than the field notes of the survey under which they claimed, being the best and only evidence. The trial court overruled the objection and held that defendant's evidence con-

clusively established that the tract in possession of defendant was lot 2, section 17, as delineated on the plat, according to which the land was patented to defendant, which was affirmed by the Florida Supreme Court. This Court affirmed the trial court, but, in doing so, stated that the trial court's ruling involved a federal question. Furthermore, the *Gill* case involved a question of what the government sold the parties, and not, as here, what land private parties intended to lease by their private contract.

II

THE JUDGMENT OF THE STATE COURT WAS BASED ON AN ADEQUATE AND INDEPENDENT STATE GROUND.

The State Court judgment is, in fact, based upon a non-federal ground which is adequate to support the judgment without consideration of a federal question. The State Court merely construed and interpreted private contracts, being the lease and selection instrument between La-Terre and Union, and recognized a boundary between Sections 13 and 110, which the court found was one which the parties intended to recognize by their contracts. The judgment based thereon could have had no other effect. The Court of Appeal did not pass on, or even consider, any federal questions, no federal statutes having been referred to and numerous state court authorities having been relied upon for its Opinion.

Therefore, inasmuch as no federal questions were presented to or decided by the court below, this Court

has no jurisdiction. But even if it were otherwise, this Court will not pass on federal questions "where it appears that the judgment rests on adequate state grounds." *Black v. Cutter Laboratories,* supra. Construction of a local contract by a state court under local law certainly presents an independent state ground. *Black v. Cutter Laboratories,* supra.

The court below did not "void" or even purport to void any Federal Township boundaries, or "fix" new ones, contrary to petitioners' assertions. The three range lines which were surveyed by the Federal Government still exist on the ground today in the place where all parties to this suit have agreed, by their surveyors' testimony, they are located. One or perhaps all of them may be used in the future by other parties in their contracts affecting land in the area, and, as here, a court may be presented in the future with the construction of such a contract to determine which range line the parties intended to recognize as a boundary in their descriptions. It would only be natural if this occurred.

This Court refused to grant a writ to review a Lousiana Supreme Court decision in *White v. Leovy,* 174 U.S. 91 (1899), in which the controversy concerned the location of certain swamp and overflowed lands according to "an official plat or survey made by G. F. Connelly in 1836." Plaintiff claimed the land by an 1890 patent. Defendant claimed the land by an 1893 patent. Plaintiff claimed in the state court that the governmental survey referred to in his patent could not "be questioned or im-

peached by the defendant, and this court is wholly without jurisdiction to determine whether same is or not erroneous, and that the said patent cannot be questioned or impeached by the defendant for fraud or error." The state court determined the question adversely to plaintiff, based entirely on a construction of the land descriptions in the patents. In denying a review, this Court stated as follows:

> "It is manifest no federal question was passed on by the court. Its decision was put upon an independent ground, involving no federal question, and of itself sufficient to support the judgment. It merely determined the extent of the grant to the state, and, interpreting the contending patents as conveyances, decided that the lands described in that of plaintiff did not embrace the lands in controversy, and that the lands described in that of defendant did embrace them. This was but the interpretation of written instruments, and, if it were even apparent to us to be wrong, — which we cannot say, — we should nevertheless be without power to review it."

The *White* case does not differ in any material respect from this case and should set at rest the matter of an adequate and independent state ground. See, also, *Clark on Surveying and Boundaries* (3rd ed. 1959), § 38 on "Boundaries, a question of state law," pages 46, 47, to the effect that, after the federal government disposed of the public domain, the questions with respect to the matter of boundaries established by government surveys are strictly a matter of state law.

III

PETITIONERS FAILED TO RAISE AND PRESERVE A FEDERAL QUESTION IN THE STATE COURTS.

The jurisdictional requirement relative to the raising of a substantial federal question under subsection (3) of § 1257 is that the validity of a statute must have been "drawn in question," or a federal title, right, privilege or immunity must have been "specially set up or claimed." This petitioners have not done.

Furthermore, the federal claim and the grounds therefor must be brought to the state court's attention with fair precision. As stated by this Court in *Oxley Stave Co. v. Butler County*, 166 U.S. 648, 655 (1897), "the jurisdiction of this court to re-examine the final judgment of a state court cannot arise from mere inference, but only from averments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a federal right." Nowhere in the record of this case has this requirement been met.

La-Terre and Placid have urged to this Court, erroneously, we believe, as indicated hereinabove, that Union and Texas Gulf "petitioned The Louisiana Court to upset the Federal boundaries" and "draw new boundaries." Assuming, arguendo, that such a petition was made or that such was the effect of their petition, La-Terre and Placid did not set up or plead as a special and affirmative defense in their answer that such action would violate federal law, as they are doing at this late stage of the

proceedings. By analogy, a plea of unconstitutionality of a statute in Louisiana is a special and affirmative defense which must be specially pleaded, and it cannot be urged for the first time in an appellate court. *Long v. Northeast Soil Conservation District of Louisiana*, 226 La. 824, 77 So. 2d 408 (1955). This Court recognizes that a state "may attach reasonable limitations to the assertion of federal constitutional rights" and such limitations must be respected. *Michel v. Louisiana*, 350 U.S. 91, 97 (1955). Thus, it is our contention that petitioners' failure to follow state procedure is fatal to their chance for review by this Court. *In re Lampkin*, 355 U.S. 59 (1957); *Ferguson v. Georgia*, 365 U.S. 570, 572 (1961)

Inadequate to raise and preserve a federal question was the oral argument made by counsel for petitioners at the trial of this case regarding *Cragin v. Powell*, supra, upon which petitioners rely. (Petition, p. 10, footnote 4) *Live Oak Water Users' Ass'n v. Railroad Commission*, 269 U.S. 354, 357-358 (1925); *Lynch v. New York ex rel. Pierson*, 293 U.S. 52, 54 (1934).

Petitioners also rely on general statements made on pages 11 through 17 of their Brief on Appeal to the Court of Appeal, regarding *state court* authorities, *Cragin v. Powell*, supra, and a surveyor's manual (Petition p. 10, footnote 4), but without reference to any federal statutes. This clearly is insufficient, even if they had properly raised a federal question in the trial court, which they did not. This Court has consistently held that the federal question must be raised on the record, and

the briefs are no part of the record for that purpose. E.g., *Lynch v. New York ex rel. Pierson*, supra; *Live Oak Water Users' Ass'n v. Railroad Commission*, supra; *Harding v. Illinois*, 196 U.S. 78, 84 (1904).

As the argument in a brief does not supply the deficiency of not raising the federal question in the actual record, and since the guiding principle of law is that the state court must have had an opportunity to pass on the federal question, it is too late to raise that question for the first time in a petition for certiorari. U. S. Supreme Court Rule 23. And see generally, in support of the text, *White River Lumber Co. v. Arkansas*, 279 U.S. 692, 699-700 (1928); *Whitney v. California*, 274 U.S. 357, 362-363 (1926); *Thomas v. Iowa*, 209 U.S. 258 (1907).

Again, petitioners rely on a vague statement in their application to the Louisiana Supreme Court for a writ of certiorari, or review, which was denied without an opinion, to establish that they raised a federal question. Even if, in their Louisiana Supreme Court applications, they had "drawn into question" the validity of a statute or "specifically set up or claimed" a federal title, right, privilege or immunity, which they did not do, this would be insufficient unless that Court had actually entertained the petition and expressly decided the question. *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945); *Hanson v. Denckla*, 357 U.S. 235, 243-244 (1958).

Thus, petitioners have waived any federal issue and there is no basis for the assertion of this Court's jurisdiction.

CONCLUSION

Since we believe this Court will not reach the merits of this case and will find it has no jurisdiction to review the matter, no discussion of the well considered decision below, in addition to what has already been presented in stating the case, appears appropriate.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1113~~ 85

PLACID OIL COMPANY and LA-TERRE CO., INC.,

Petitioners,

—v.—

UNION PRODUCING COMPANY and TEXAS GULF PRODUCING COMPANY,

Respondents.

PETITIONERS' REPLY BRIEF

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IN THE

Supreme Court of the United States

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No. .....

PLACID OIL COMPANY and LA-TERRE CO., INC.,

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—v.—

UNION PRODUCING COMPANY and TEXAS GULF PRODUCING COMPANY,

Respondents.

PETITIONERS' REPLY BRIEF

I. THE CASE PRESENTS A FEDERAL QUESTION.

Respondents have suggested that this case is quite innocuous. As they see it, the decision below has no significance to anyone other than the parties and, the Court of Appeal did no more than resolve a question of intent. The bother is that this is not what the Court of Appeal said, and it is not what the Court of Appeal did.

Federal authority for over a century had fixed the East Range Line of Township 20 South, Range 17 East as the line surveyed by Connelly in 1837, and the West Range Line of Township 20 South, Range 18 East as the line surveyed by Gorlinski in 1855. The Court of Appeal wiped these lines out and held that ". . . the controlling range

line . . . is the one established by Foster and Walker in 1831. . . ." (Appendix to Petition p. 55b)

To suggest that the Court of Appeal merely determined the intent of the parties is to ignore both that court's opinion and judgment. The Court recited at the outset of its opinion that the dispute ". . . was completely dependent upon *location* of the correct range line . . ." (App. p. 18b). The suit sought ". . . a judgment *determinative* of the ground location of the property . . ." (App. p. 24b). "The District Court *fixed* the ground location . . ." (*ibid.*). It was not possible to survey the actual lands under lease ". . . *until the courts locate* the proper boundaries of these two sections . . ." (App. p. 35b). "[T]he question which must be first settled is *the legal bounds of the two sections* involved here because of the overlapping surveys. Once the boundaries . . . are *legally fixed* it will be a simple matter to locate the property as described" (App. p. 36b). "We are not confronted with a surveying problem but a *judicial* one" (App. p. 37b). "[W]e are thoroughly in accord with the conclusion of Mr. Smith . . . that is *it is the province of the court* and not of the surveyors *to decide what shall be the eastern boundary* of Township 20 South, Range 17 East and the western boundary of Township 20 South, Range 18 East. . . ." "Counsel for defendants-appellees contend that the court has no *jurisdiction* to recognize a common range line as a boundary between . . ." the two Townships (App. pp. 39-40b). *"A decision must be reached which fixes the location* of the east boundary, or range line, of [the two Townships], this range line to be the common boundary between these two ranges in Township 20" (App. p. 46b). The survey lines accepted by Federal

authority for over a century were, whatever the Federal Government may think, *"unauthorized and legally without any effect"* (App. p. 50b). Indeed, the established lines were even *"erroneous and illegal"* (App. p. 54b). The Court of Appeal decreed that whatever may have been Federal practice for over a century, the line "located on the ground" should be the line "surveyed, run and marked in or about 1831 by A. H. Foster and I. N. Walker" (App. p. 57b). (All emphasis supplied)

So to say that the issue presented is one of intent is to turn this case on its head. To reach the result it reached, the Court of Appeal first had to establish a new "corrected" common range line between the two Federal Townships. Then, and only then, could it look to the lease between the parties and say, "This is what they intended." What the parties "intended," in this artificial sense, is perfectly clear: they intended to take property described by Federal Township boundaries. The only issue was, what were those Township boundaries? Respondents say to this, "The Court found that Foster & Walker is the proper line, though neither party could have guessed it at the time." (It was nowhere on any of the charts, official or unofficial.) They argue that when the parties stipulated to leases based on the Federal survey system, they intended whatever Federal township boundaries a state court might someday decide were the correct ones. Thus, when the Court below held that the two Federally-established surveys were illegal, they say, and reinstated a survey which had not been recognized for over a century by Federal authority, it was creating the line the parties intended in the first place. *Post hoc, propter hoc.*

If the case turned on the intent of these parties, then its effects would be limited to the parties. The Court below, however, was quite clear that it was establishing "the" boundary, not just for this case but for all property owners in the area, whether they were parties to the lease contract or not. It said: "As this record reveals, there are many conflicting titles due to this overlap that will most probably be vitally affected by the decision in this case" (App. p. 35b). The issue, therefore, is not intent, but power; not what the parties wanted, but whether a State court had the jurisdiction to "establish," "fix" and "determine" the boundaries of Federal townships. We urge that this is a matter of Federal consequence.

II. THE PRECEDENTS DEMONSTRATE THAT THE CASE PRESENTS A FEDERAL QUESTION.

Respondents have trouble with the cases. *Cragin* v. *Powell,* 128 U.S. 691 (1888), which involved these very Federal Townships and surveys, and which is crystal clear for the proposition that the courts have no jurisdiction to redraw such Townships and surveys, they pass off as *"obiter dictum"* (Res. Br. p. 14). *Lanfear* v. *Hunley,* 71 U.S. 204 (1866), they cite as a case involving a decision by the Louisiana Supreme Court determining the location of a boundary. What they fail to point out is that *Lanfear* involved particular legislation—"An Act for the Relief of Ambrose Lanfear of Louisiana," Act of July 18, 1856, 11 Stat. 473—which "gives to the settlers upon the land, in express terms, the right to institute and maintain the litigation necessary to enable them to test the validity of the surveys" (71 U.S. at 208). There is no similar statute

here. And, as the respondents point out, *White* v. *Loevy*, 174 U.S. 91 (1899) was "based entirely on a construction of the land descriptions in the patents" (Res. Br. p. 20), not on any overlap, attempt to correct Federal Township boundaries, or a challenge to Federal surveys.[1]

Finally, Respondents' analysis of *Graham* v. *Gill*, 223 U.S. 643 (1912), misses the point. There this Court did hold that the State Court judgment involving the Federal system "as to the mode of surveying public lands" presented a Federal question. This was based, as the Court's own reference makes clear, on Rev. Stat. § 2396 (1875), as amended, now 43 U.S.C. § 752, which is precisely the statutory provision upon which we rely. That statute provides that the Federal surveys " . . . shall be established as the proper boundaries of the sections . . . for which they were intended. . . . " This, as *Cragin* v. *Powell* recognized, is the foundation stone of the Federal survey system.

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[1] Respondents also cite Section 38 of *Clark on Surveying and Boundaries* (3d Ed. 1959) for the proposition that "questions with respect to the matter of boundaries established by government surveys are strictly a matter of state law." (Res. Br. p. 20). In fact, Section 38 of *Clark* sets out the very principle Petitioners have presented—that Federally-surveyed boundaries may not be amended by the State, or even by the Department of Interior, once the land has passed to private hands. *Clark* states that:

> "Neither acts of congress nor of the state legislature nor even consent of adjoining landowners change the location of corners of federal surveys once established after the land has been sold and is in private hands. Nor can new corners be created if the site of the old corners is lost. All that can be done in such circumstances is to use proper methods of establishing where the original corners were first located." (*Clark on Surveying and Boundaries* § 38 p. 47 (3d Ed. 1959))

III. PETITIONERS RAISED THE FEDERAL QUESTION AND THE COURT OF APPEAL DECIDED IT.

Petitioners contended at every appropriate level of this proceeding that the Louisiana courts lacked jurisdiction to change the Federal surveys referred to in the lease contract. The Court of Appeal quoted Petitioners' argument at length in its opinion before ruling explicitly on the Federal issue (App. p. 40b). It noted that:

> "Counsel for defendants-appellees contend that the court has no jurisdiction to recognize a common range line as a boundary between Section 13, Township 20 South, Range 17 East and Section 110, Township 20 South, Range 18 East for it would in effect be changing the surveys of the public lands as made by Foster and Walker, Connelly or Gorlinski. In their brief counsel state:
>
> 'Under the express ruling of the United States Supreme Court in Cragin v. Powell, supra, and the numerous pronouncements of the Louisiana Supreme Court in Leader Realty Company v. Lakeview Land Company, supra, and State v. Aucoin, supra, the Courts are without jurisdiction to change surveys of the public lands. The surveys therefore cannot be changed so as to conform to plaintiffs' "interpretations".'" (App. p. 40(b).)

The Court then quoted at length from *Cragin* v. *Powell, supra,* but rejected its rule of Federal preemption as to Federal surveys, concluding, erroneously, as our petition demonstrates, that *Cragin* did not apply. When a State court considers and passes on the Federal issue, further inquiry as to how the issue was raised is irrelevant. *Whit-*

ney v. *California*, 274 U.S. 359, 360-1 (1927); *Manhattan Life Ins. Co.* v. *Cohen*, 234 U.S. 123, 134 (1913); *Raley* v. *Ohio*, 360 U.S. 423, 436 (1959). In this case, the question was presented and it was decided—contrary to Federal law.

We respectfully submit therefore that the issue should be authoritatively resolved by this Court and that the writ should issue.

Respectfully submitted,

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224-439—66

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 85

PLACID OIL COMPANY AND LA-TERRE CO., INC.,
PETITIONERS

v.

UNION PRODUCING COMPANY AND TEXAS GULF PRODUCING COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA AND/OR TO THE COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to the Court's order of May 16, 1966, 384 U.S. 937, inviting the Solicitor General to file a brief expressing the views of the United States in this matter.

This suit was brought to determine the boundary between land held by respondents Union Producing Company and Texas Gulf Producing Company under a lease from petitioner La-Terre Co., Inc., and land held by petitioner Placid Oil Company under a subsequent lease from La-Terre. The Louisiana district court held for petitioners. The court of appeal reversed (Pet. App. 18b–58b). The Supreme Court

of Louisiana denied review (Pet. App. 59b), stating that [a]ccording to the facts of the case, as found to be by the Court of Appeal, the result reached by the Court is correct."

The United States has no present proprietary interest in the land which is the subject matter of this litigation. Nor has it any such interest in any other real property located in the two townships whose boundaries underlie the dispute. If, therefore, the decision below involves no more than a determination of the intent of the parties in accordance with principles of State law, the United States has no interest in the dispute or in the manner of its resolution. If, on the other hand, the court below purported to set aside township boundaries approved and promulgated under the federal land survey program as authorized by Congress (43 U.S.C. 751–775), then a substantial federal question is presented in which the United States is concerned.

The survey of the public lands of the United States is a monumental undertaking of the national government which has been carried forward now for almost two centuries. In essence, the survey has entailed the subdivision, prior to settlement, of the entire western domain on a systematic plan designed to encourage the settlement of the wilderness, to maximize security of title for grantees of the United States, and to facilitate the identification and protection of public lands. This survey program, which represented a major departure from the cadastral

methods prevailing in the original 13 States,[1] was first adopted in 1785 by the Continental Congress for application to the lands ceded by the several States to the United States.[2] The ordinance of 1785 directed the Geographer of the United States to lay out east-west base lines and north-south meridians, to mark upon the ground and record on plats numbered, rectangular townships of six miles square subdivided into sections of one mile square. Following the ratification of the Constitution, the original plan, with minor modifications, was adopted and extended by Congress, starting with the Act of May 18, 1796 (1 Stat. 464). That Act created the post of Surveyor General and required him to survey and divide "the lands lying northwest of the river Ohio, and above the mouth of the river Kentucky, in which the titles of the Indian tribes have been extinguished" (1 Stat. 465). The Act preserved the plan of regularly numbered, marked and recorded townships and sections, and it authorized the sale of townships or sections as surveyed while reserving to the United States four sections at the center of each township.

Commencing with the area now included in the State of Ohio, the survey program continued across the continent as additional lands were acquired by the federal government. The program today embraces

[1] See Clark L. Gumm, "The Foundation of Land Records" in Bureau of Land Management, *Our Public Lands* (Oct. 1957), p. 4.

[2] 28 Jour. of the Cont. Cong. 375–381.

thirty States and extends over 1.3 billion acres.[3] The survey has served as the principal basis for identifying some 6.5 million conveyances from the public domain, including 287 million acres granted under the homestead acts (43 U.S.C. 161), 225 million acres granted to States for various purposes, and 94 million acres granted as railroad subsidies.[4] Furthermore, the Bureau of Land Management, as a successor, under the Secretary of the Interior, to the Surveyor General, continues to extend the survey. Some 470 million acres, principally in Alaska, remain to be surveyed. In 1964 the Bureau completed and officially accepted new surveys encompassing 523,302 acres.[5] At the same time, it has been necessary to resurvey lands where boundaries have become obscure, original monuments obliterated and the like. During 1964, the Bureau accepted such resurveys encompassing more than a million acres.[6]

Given the magnitude of the survey project, the conditions prevalent in the West during much of the last century, the difficulties of the terrain, the occasional use of unreliable contractors, and the relative crudeness of surveying instruments, it was probably inevitable that departures from the statutory plan

[3] Bureau of Land Management, *Public Land Statistics* (1964), p. 125. The States not included within the survey are the 13 former colonies, as well as Kentucky, Maine, Vermont, West Virginia, Tennessee, Texas and Hawaii. A map indicating the scope of the survey and the base lines and principal meridians employed by it is annexed hereto as the Appendix.

[4] *Id.* at 6.

[5] *Id.* at 128.

[6] *Ibid.*

should occur. In any event, it is well recognized that the lines run were not always true, the distances measured were not always accurate, and gaps, omissions and overlaps of various sorts occurred with some frequency. Some of these errors, when discovered in the course of surveying, could be rectified without difficulty. Thus, 43 U.S.C. 751 (para. 5), which derives from the Act of May 10, 1800 (2 Stat. 73), provides:

> Where the exterior lines of the townships which may be subdivided into sections or half-sections exceed, or do not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of sections or half-sections in such township, according as the error may be in running the lines from east to west, or from north to south; the sections and half-sections bounded on the northern and western lines of such townships shall be sold as containing only the quantity expressed in the returns and plats respectively, and all others as containing the complete legal quantity.

The Surveyor General and his successors have had discretionary authority to conduct resurveys or retracements of prior surveys in order to redetemine boundaries rendered doubtful by the obliteration of monuments or by conflicts between field notes, plats and terrain. See, 43 U.S.C. 772, 773; *Lane* v. *Darlington,* 249 U.S. 331; *Kirwan* v. *Murphy,* 189 U.S. 35.[7] Such resurveys, however, entail difficulties of

[7] See, generally, U.S. Department of the Interior, *Manual of Surveying Instructions* (1947), pp. 309–341.

their own. But, while the government's procedures with respect to resurveys have been improved and simplified over the years,[8] it has never been doubted that such resurveys cannot impair any pre-existing right or title in the land. *Lane* v. *Darlington*, *supra*; *Cragin* v. *Powell*, 128 U.S. 691, 699.

Whatever the preferable course with respect to corrective surveys, the key point is that while the courts have jurisdiction to adjudicate all questions of proprietary interest, the establishment and correction of the federal survey falls within the exclusive province of the Secretary of the Interior and his predecessors. This Court has repeatedly recognized this division of functions. In *Cragin* v. *Powell*, 128 U.S. at 697–700, while noting that "the courts have power to protect the private rights of a party who has purchased, in good faith, from the government against the interferences or appropriations of corrective resurveys made by that department [the Land Department]" the Court stressed that "the power to make and correct surveys of the public lands be-

[8] In *Cragin* v. *Powell*, 128 U.S. 691, 698, the Court quoted a letter from the Commissioner of the General Land Office to the surveyor general for Louisiana:

"* * * A resurvey, properly considered, is but a retracing, with a view to determine and establish lines and boundaries of an original survey, * * * but the principle of retracing has been frequently departed from, where a resurvey (so called), has been made and new lines and boundaries have often been introduced, mischievously conflicting with the old, and thereby affecting the areas of tracts which the United States had previously sold and otherwise disposed of."

longs to the political department of the government." The Court there concluded:

> Whether the official survey made by Connelly is erroneous, or should give way to the extent of its discrepancies to the survey reported by McLeran, is a question which was not within the province of the court below, nor is it the province of this court to consider and determine. The mistakes and abuses which have crept into the official surveys of the public domain form a fruitful theme of complaint in the political branches of the government. The correction of these mistakes and abuses has not been delegated to the judiciary, except as provided by the act of June 14, 1860, 12 Stat. 33, c. 128, in relation to Mexican Land claims, which was repealed in 1864, 13 Stat. 332, c. 194, § 8. From the earliest days matters appertaining to the survey of public or private lands have devolved upon the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior. Rev. Stat. § 453. * * *

Similarly, in *Russell* v. *Maxwell Land Grant Co.*, 158, U.S. 253, 256, 259, the Court observed that "A survey made by the proper officers of the United States, and confirmed by the Land Department, is not open to challenge by any collateral attack in the courts." The Court emphasized the distinction noted above:

> * * * Whether a survey as originally made is correct or not is one thing, and that, as we have seen, is a matter committed exclusively to the Land Department, and over which the

> courts have no jurisdiction otherwise than by original proceedings in equity. While on the other hand, where the lines run by such survey lie on the ground, and whether any particular tract is on one side or the other of that line, are questions of fact which are always open to inquiry in the courts. * * *

The delegation to the executive branch of exclusive jurisdiction in the implementation of the federal survey program is fundamental to the congressional scheme. Supervision of the program is entrusted to the Secretary of the Interior (43 U.S.C. 2). Authority to make resurveys is left to the Secretary's discretion (43 U.S.C. 772, 773), as is power to authorize departures from the rectangular mode of survey (43 U.S.C. 770). Most indicative, however, of the conclusive nature of the survey as promulgated by the Secretary are the three "principles" laid down by Congress in 1805 (2 Stat. 313) and preserved by all subsequent legislation (43 U.S.C. 752):

> First. All the corners marked in the surveys, returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate * * *.
>
> Second. The boundary lines, actually run and marked in the surveys returned by the Secretary of the Interior or such agency as he may designate, shall be established as the proper boundary lines of the sections, or subdivisions, for which they were intended, and the length of such lines as returned, shall be

> held and considered as the true length thereof. * * *
>
> Third. Each section or subdivision of section, the contents whereof have been returned by the Secretary of the Interior or such agency as he may designate, shall be held and considered as containing the exact quantity expressed in such return * * *.

These principles relate intimately to the legislate objectives. From the outset the survey system was intended by Congress to facilitate the sale of public lands, which was seen as a major source of revenue for the national government. At the same time it was hoped that, by subdividing the land into relatively small sections, purchases by farmers and other persons of modest means could be encouraged and wholesale land speculation discouraged. See 5 Annals of Cong. 329 *et seq.* Both purposes were subserved by a survey system designed to enable countless small purchasers to identify and enter with confidence sections selected at distant Land Offices and to minimize the likelihood of subsequent litigation. Moreover, precisely because the survey was based on a simplified, integrated grid system, if courts could review and revise the survey, voluminous litigation and correspondingly grave uncertainty were bound to result. Indeed, judicial relocation of a single base line or meridian might unsettle thousands of individual holdings. As this Court observed a century ago, "great confusion and litigation would ensue if the judicial tribunals, state and federal, were permitted to interfere and overthrow the public surveys" (*Haydel* v. *Dufresne,* 17 How. 23, 30).

The fundamentals of the federal survey system, including the principle of a commitment to executive control, have not been altered by Congress in the course of nearly two hundred years. Nor have underlying reasons ceased to be relevant. It is true today as in 1854 that judicial revision of the survey would entail "great confusion and litigation." Moreover, notwithstanding the very extensive grants of public land to States and private persons, the federal government remains the proprietor of more than 700 million acres, or nearly one-third of the land of the nation.[9] The identification, description, and protection of that public domain is largely dependent upon the survey. Furthermore, the gradual disposition of portions of the public lands continues to proceed with reference to the survey. In 1964 the Bureau of Land Management granted over 9,000 patents covering more than 2 million acres.[10]

Both as proprietor and grantor, the United States is committed to the preservation of the integrity of the public lands survey system. As the Court has long recognized, *ad hoc* judicial revision of the survey is incompatible with the intent of Congress and the proper functioning of that system.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JULY 1966.

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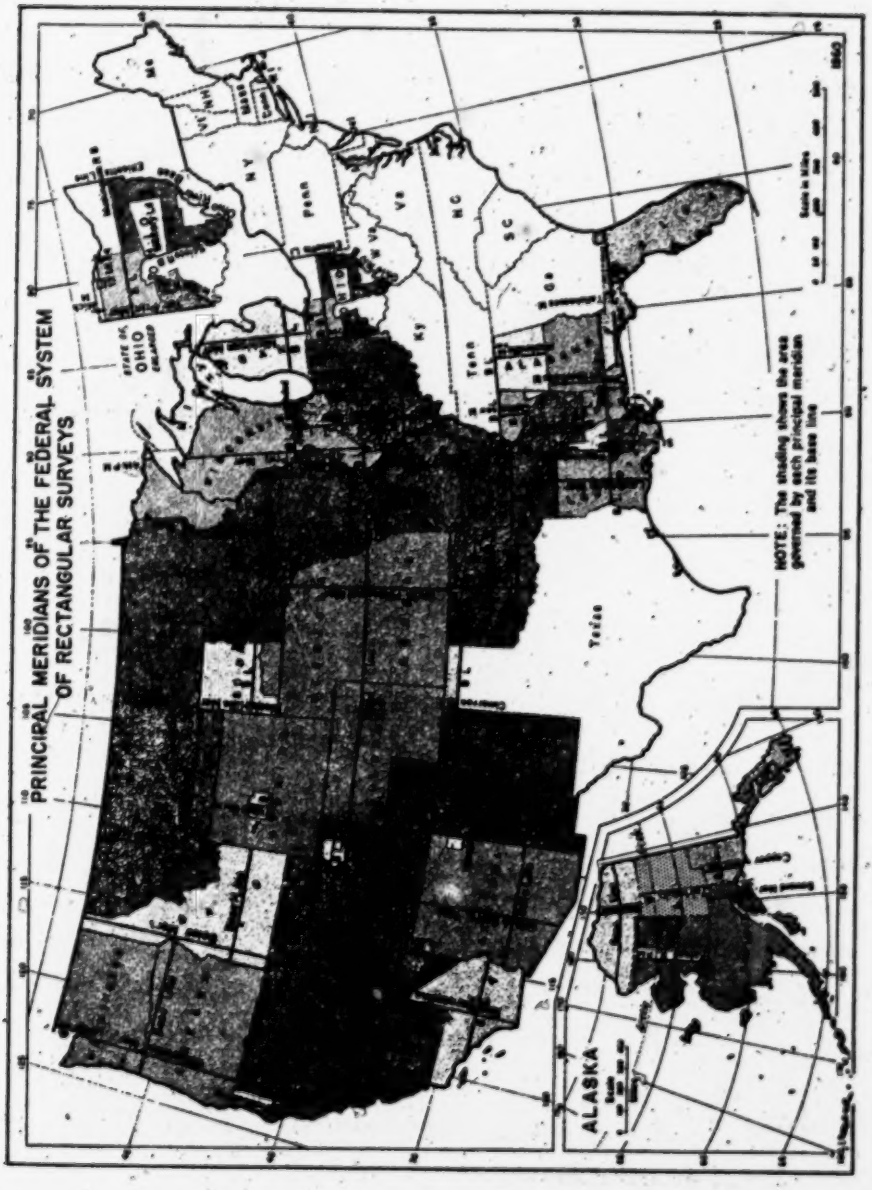
[9] Bureau of Land Management, *Public Land Statistics* (1964), p. 1.

[10] *Id.* at 42.

APPENDIX



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